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Vol. I

TRANSCRIPT OF RECORD

(Pages 1 to 360)

Supreme Court of the United States

OCTOBER TERM, 1952

No. 53

AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 6, 1952

CERTIORARI GRANTED OCTOBER 13, 1952

INDEX

	PAGE
Petition for Enforcement of Order of N.L.R.B., 10332 ..	1
Order	2
Appendix A	5
Petition for Enforcement of Order of N.L.R.B., 10331 ..	7
Order	8
Appendix A	11
Motion for Consolidation of Causes	12
Order Consolidating Causes	14
Petition to Review and Modify Order—	
Jurisdiction	15
Proceedings before the Board	16
Order	20
Statement of Points	23
Prayer	25
Appendix A	27
Affidavit to Petition	29
Answer to Petition to Review	30
Motion to Strike	31
Certificate of N.L.R.B., re Contents of Record	33
Official Exhibit No. B-1-A—	
Charge Against Labor Organization	39
Official Exhibit No. B-1-C—	
Complaint, Case No. 9-CB-5	43
Official Exhibit No. B-1-F—	
Answer	49
Intermediate Report in Case No. 9-CB-5—	
Statement of the Case	50
Findings of Fact	54

PAGE

Conclusions 118
Recommendations 159
Appendix A—Commerce Data 162
Appendix B—Form P-6A 163
Appendix C—Notice 165

Exceptions to Intermediate Report in Case No. 9-CB-5 167

Statement of Exceptions by American Newspaper Publishers Association in Case No. 9-CB-5 180

Statement of Exceptions by Intervenor Southern Newspaper Publishers Association in Case No. 9-CB-5 194

Brief and Exceptions to Report by Inland Daily Press Association in Case No. 9-CB-5 224

Respondents' Exceptions to Intermediate Report in Case No. CB-5 281

Certificate of Service 282

Decision and Order in Case No. 9-CB-5 283
Order 297
Appendix A—Notice 299

Complaint in Case No. 13-CB-6 300

First Amended Charge in Case No. 13-CB-6 305
Appendix A 307
Appendix B 308

Intermediate Report in Case No. 13-CB-6—
Statement of the Case 310
Findings of Fact 313
Conclusions of Law 329
Recommendations 330
Appendix A—Notice 334
Appendix B—Notice 336

Respondents' Exceptions to Intermediate Report in Case No. 13-CB-6 337

PAGE

Certificate of Service 338

Decision and Order in Case No. 13-CB-6 339

Order 347

Member Concurring in Findings—
James J. Reynolds, Jr. 350

Members Dissenting—
John M. Houston and Abe Murdock, dissenting 354

Appendix A 358

Order Consolidating Cases 360

The following indices cover the Stenographic Report and Exhibit Volumes and are incorporated in each of the following volumes.

INDEX.

PAGE

Hearing Before N.L.R.B., Case No. 9-CB-5—
- Appearances 361
- Exhibits Offered for Identification 362
- Arguments re motions 363
- Statement by Mr. Rhetts 364
- Statement by Mr. Hanson 364
- Motion by Mr. Sinsheimer 365
- Motion and Remarks by Mr. Van Arkel 366

Appearance of Andrew C. Hamilton, attorney for Chicago Newspaper Publishers Association—
- Statement by Mr. Hamilton 612
- Statement by Mr. Sinsheimer 613
- Stipulation by Mr. Van Arkel re Local 16 617

Colloquy 593, 612, 618, 721, 833, 1289

Statement by Mr. Sinsheimer 1197

Introduction by Stipulation of Documents, etc. by Mr. Sinsheimer 1201

Stipulation re correction of Transcript of Testimony of Woodruff Randolph 1582

Argument Re Exhibits 1583

Statement by Mr. Van Arkel re Agreements 1587

WITNESSES.

On Behalf of N.L.R.B.:

George N. Dale—
- Examination by Trial Examiner Leff 373
- Direct Examination by Mr. Sinsheimer 373
- Cross Examination by Mr. Van Arkel 395
- Redirect Examination by Mr. Sinsheimer 436
- Recross Examination by Mr. Arnold 443

Reese J. Highfield—
- Direct Examination by Mr. Sinsheimer 445
- Cross Examination by Mr. Van Arkel 458
- Redirect Examination by Mr. Sinsheimer 468

PAGE

John F. O'Keefe—
Examination by Trial Examiner Leff 469
Direct Examination by Mr. Sinsheimer 469
Direct Examination (continued) by Mr. Sinsheimer 546
Cross Examination by Mr. Van Arkel 588
Cross Examination (continued) by Mr. Van Arkel 621
Redirect Examination by Mr. Sinsheimer 634

Recalled—
Direct Examination by Mr. Sinsheimer 725

In Rebuttal—
Direct Examination by Mr. Sinsheimer 834
Examination by Trial Examiner Leff 836
Cross Examination by Mr. Van Arkel 838

Harold Grumhaus—
Examination by Trial Examiner Leff 637
Direct Examination by Mr. Sinsheimer 637
Cross Examination by Mr. Van Arkel 661
Redirect Examination by Mr. Sinsheimer 666

Worth Coutney—
Examination by Trial Examiner Leff 667
Direct Examination by Mr. Sinsheimer 667
Cross Examination by Mr. Van Arkel 686
Redirect Examination by Mr. Sinsheimer 699
Recross Examination by Mr. Van Arkel 701

In Rebuttal—
Examination by Trial Examiner Leff 839
Cross Examination by Mr. Van Arkel 840
Redirect Examination by Mr. Van Allen 841
Recross Examination by Mr. Van Arkel 841

James A. Griffin, Jr.—
Examination by Trial Examiner Leff 702
Direct Examination by Mr. Sinsheimer 702

T. E. Woodard—
Examination by Trial Examiner Leff 704
Direct Examination by Mr. Sinsheimer 704
Cross Examination by Mr. Van Arkel 719

PAGE

Eugene Frederick Kelly—
Examination by Trial Examiner Leff 844
Direct Examination by Mr. Sinsheimer 844
Cross Examination by Mr. Van Arkel 870

William J. Harrigan—
Examination by Trial Examiner Leff 896
Direct Examination by Mr. Sinsheimer 896

Resumed—
Direct Examination (continued) by Mr. Sinsheimer 904
Cross Examination by Mr. Van Arkel 917
Redirect Examination by Mr. Sinsheimer 935

Recalled—
Direct Examination by Mr. Sinsheimer 983

Franklin Dunn Schurz—
Examination by Trial Examiner Leff 936
Direct Examination by Mr. Sinsehimer 936
Cross Examination by Mr. Van Arkel 947

Norman Applegarth—
Examination by Trial Examiner Leff 983
Direct Examination by Mr. Sinsheimer 984
Cross Examination by Mr. Van Arkel 1026

William Mills—
Direct Examination by Mr. Martin 1055
Cross Examination 1057

E. R. Hatton—
Examination by Trial Examiner Leff 1059
Direct Examination by Mr. Martin 1059
Recross Examination by Mr. Van Arkel 1059

Clayton G. Underhill—
Examination by Trial Examiner Leff 1086
Direct Examination by Mr. Sinsheimer 1086
Cross Examination 1120

Frank J. Clancy—
Examination by Trial Examiner Leff 1124
Direct Examination by Mr. Sinsheimer 1124
Cross Examination by Mr. Van Arkel 1132
Redirect Examination by Mr. Sinsheimer 1133
Recross Examination by Mr. Van Arkel 1134

PAGE

Joseph J. Casey—
Examination by Trial Examiner Leff 1140
Direct Examination by Mr. Martin 1140
Cross Examination by Mr. Van Arkel 1185
Redirect Examination by Mr. Martin 1189
Recross Examination by Mr. Van Arkel 1190

William Mapel—
Examination by Trial Examiner Leff 1436
Direct Examination by Mr. Sinsheimer 1436
Cross Examination by Mr. Van Arkel 1501
Redirect Examination by Mr. Sinsheimer 1516

Recalled—
Direct Examination by Mr. Martin 1557

Charles C. Lane—
Examination by Trial Examiner Leff 1524
Direct Examination by Mr. Sinsheimer 1524
Cross Examination by Mr. Van Arkel 1531

Frederick Neal Murphy—
Direct Examination by Mr. Martin 1532
Cross Examination by Mr. Van Arkel 1550
Redirect Examination by Mr. Martin 1556

Cortland J. Strang—
Direct Examination by Mr. Martin 1559
Cross Examination by Mr. Van Arkel 1569

On Behalf of Respondents:

Edward Francis Fanning—
Examination by Trial Examiner Leff 729
Direct Examination by Mr. Van Arkel 730

John P. Pilch—
Examination by Trial Examiner Leff 735
Direct Examination by Mr. Van Arkel 735
Cross Examination by Mr. Sinsheimer 751
Redirect Examination by Mr. Van Arkel 753

Recalled—
Direct Examination by Mr. Van Arkel 973

Joe Rhoden—
Examination by Trial Examiner Leff 754
Direct Examination by Mr. Van Arkel 754

PAGE
Cross Examination by Mr. Sinsheimer 805
Examination by Mr. Diamond 829
Examination by Mr. Van Allen 830

Mearle M. Morrison—
Examination by Trial Examiner Leff 880
Direct Examination by Mr. Van Arkel 880
Cross Examination by Mr. Sinsheimer 890
Redirect Examination by Mr. Van Arkel 894
Recross Examination by Mr. Sinsheimer 895

Recalled—
Direct Examination (continued) by Mr. Van Arkel 903

James Cecil Rhodes—
Direct Examination by Mr. Van Arkel 953

Max Burns—
Direct Examination by Mr. Van Arkel 1060
Examination by Trial Examiner Leff 1061
Redirect Examination by Mr. Van Arkel 1072

Clifford G. Sparkman—
Direct Examination by Mr. Van Arkel 1073
Cross Examination by Mr. Sinsheimer 1082

Carl N. Flavin—
Examination by Trial Examiner Leff 1134
Direct Examination by Mr. Van Arkel 1134
Cross Examination 1138
Redirect Examination by Mr. Van Arkel 1139

On Behalf of the Union:

John J. Stack—
Direct Examination by Mr. Van Arkel 1192
Cross Examination by Mr. Martin 1194

Woodruff Randolph—
Examination by Trial Examiner Leff 1214
Direct Examination by Mr. Van Arkel 1214
Cross Examination by Mr. Sinsheimer 1242

Resumed—
Cross Examination (Resumed) by Mr. Hanson 1326
Redirect Examination by Mr. Van Arkel 1352

PAGE

Recross Examination by Mr. Sinsheimer 1360
Redirect Examination by Mr. Van Arkel 1365
Cross Examination 1382
Recross Examination 1435

Gerhard P. Van Arkel—
(Adverse)—
Direct Examination by Mr. Sinsheimer 1287
Cross Examination by Mr. Kaiser 1288

EXHIBITS.

General Counsel's Exhibit 1-G—
Motion, December 9, 1947, to Amend Complaint in Case No. 9-CB-5 1589

General Counsel's Exhibit 1-M—
Motion, December 16, 1947, to Amend Complaint in Case No. 9-CB-5 1591

General Counsel's Exhibit 1-W—
Notice, March 25, 1948, re testimony on resumption of hearings in Case No. 9-CB-5 1592

General Counsel's Exhibit 1-U—
Motion, January 7, 1948, to Further Amend Complaint in Case No. 9-CB-5 1593

General Counsel's Exhibit A1-D—
Motion, to Amend Complaint in Case No. 13-CB-6 1594

General Counsel's Exhibit 2-B—
Amended Certificate of Incorporation of American Newspaper Publishers Association, Incorporated, Dated May 1915 1596

Affidavits to Amended Certificate of Incorporation 1598

Appendix to Exhibit 2-B—
Books of Laws of the International Typographical Union, effective January 1st, 1947 1602

PAGE

Constitution, By-Laws and Convention Laws of the International Typographical Union and the Union Printers Home, together with Joint Agreement, etc 1603
Constitution 1603
Charter 1604
By-Laws 1622
General Laws 1693
Resolutions 1713
Burial Service 1717
Convention Laws 1723
The Union Printers Home 1730
Constitution 1733
By-Laws 1735
Resolutions 1753

Agreement re Ownership of Allied Printing Trades Union Label 1755

General Counsel's Exhibit—
4 (Letter) 1763
4-A (Letter, September 10, 1947) 1766
5-A 1770
5-B 1776
5-C 1779
5-D 1784
7-A 1785
7-B 1787
7-C 1793
7-D 1795
7-E 1799
7-F 1804
7-F-A 1822
7-G 1826
7-H 1846
7-J 1850
7-K 1858
7-L 1888
7-M 2012
7-N-1 2021
7-N-2 2023

PAGE

7-N-3 2024
7-N-4 2025
7-N-5 2026
7-N-6 2027
7-N-7 2028
7-N-8 2029
7-N-9 2030
7-N-10 2031
7-N-11 2032
7-N-12 2033
7-N-13 2034
7-N-14 2035
7-N-15 2036
7-N-16 2038
7-N-17 2039
7-N-18 2040
7-N-19 2041
7-N-20 2042
7-N-21 2043
7-N-22 2044
7-N-23 2045
7-O 2046
7-P 2057
7-Q 2058
7-R 2068
7-S 2071
7-T 2074
8 2077
9-F 2078
10-A 2103
10-B 2104
10-C 2105
10-D 2106
10-E Photostats 2109
10-F 2125
10-H 2126
10-I 2129
10-J 2130
10-K 2131
10-L 2132

PAGE

10-M 2134
10-N 2154
10-O 2155
10-P 2156
10-CC 2160
10-DD 2161
10-EE 2162
10-FF 2165
10-GG 2167
10-HH 2171
10-II 2171
10-JJ 2174
10-MM 2176
10-OO 2177
10-PP 2179
10-QQ 2181
10-RR 2182
11-A—Photostats 2184
11-B 2185
11-C 2186
11-D 2191
16 2193
17-A 2194
18-G 2196
19 2199
20 2208
21-A 2210
21-B 2215
22 2217
23 2219
24 2229
24-A 2230
24-B 2231
24-C 2237
24-D 2239
24-E 2241
24-F 2243
25 2247
26 2254
30 2255

	PAGE
31	2256
32	2257
33	2259
34	2261
34-A	2270
34-B	2271
34-C	2272
34-D	2275
34-E	2276
36-A	2277
36-B	2278
36-C	2279
36-D	2280
36-E	2281
36-F	2282
36-G	2283
36-H	2291
36-I—Photostats	2292
36-K	2303
36-L	2305
36-M	2307
36-R—Photostats	2310
36-S—Photostats	2320
36-T	2331
37-A	2332
37-B	2334
37-C	2336
47-A	2338
48-A	2339
50	2340
51	2340
52	2350
53-A	2351
53-B	2353
54	2355
55	2356
58	2372
59	2373
61	2374
63	2375

PAGE.

65 2376
66 2390
70-A 2393
70-B 2394
70-C 2395
71-A 2396
71-B 2397
72-A 2399
72-B 2401
72-C 2403
72-D 2405
73-A 2408
73-B 2409
73-C 2410
73-D 2411
73-E 2412
73-F 2413
74-A 2414
74-B 2415
75-B 2419
75-C 2426
76-A 2510
76-B 2514
76-C 2515
76-D 2516
76-E 2519
77-47 2527
77-48 2528
77-49 2529
77-50 2530
77-51a 2531
77-51b 2538
77-53a 2539
77-55 2540
80-A 2542
80-B 2564
80-C 2602
80-D 2621
81-B 2712
81-c 2713

PAGE

83 2714
85 2722
86 2734
87 2735
88 2736
90-A 2737
90-B 2738
91 2744
92 2745
93 2812
94 2815
95 2816
96 2823
97 2827
99 2828
100 2855
101 2857
102 2859
103 2864
104 2867
105 2882
106 2885
107 2891
108 2918
109 2919
110 2920
111a 2934
111b 2935
111c 2936
111d 2937
112 2938

Respondents' Exhibit—

3 2941
4 2952
5J 2953
5K 2956
5M 2961
5-N 2968
10A 2972

PAGE

11A 2978
11B 2979
11C 2981
18A 2982
18-B 3001
19A 3004
19-B 3029
19-C 3034
19-D 3037
19-F 3039
19-G 3042
19-H 3043

Inland Daily Press Association Ex. 1 3043

Inland Daily Press Association Ex. 3 3044

Southern Newspaper Publishers Assoc, Ex. 1 3050

Certificate of Service 3052

Proceedings in U.S.C.A. for the Seventh Circuit 3053
Opinion, Swaim, J. 3053
Decree 3095
Clerk's certificate (omitted in printing) 3095
Order allowing certiorari 3096

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner
v.
CHICAGO TYPOGRAPHICAL UNION NO. 16 and INTERNATIONAL TYPOGRAPHICAL UNION,
Respondents. } 10332

PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States Court of Appeals for the Seventh Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. III, Secs. 151, *et seq.*) hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against Respondents, International Typographical Union, and Chicago Typographical Union, No. 16 and their officers, agents and representatives. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of Chicago Typographical Union No. 16 and International Typographical Union, and Chicago Newspaper Publishers Association on behalf of The Chicago Daily News, Inc., Illinois Publishing and Printing Company, The Journal of Commerce Publishing Company, Sun and Times Co., and Tribune Company, Case No. 13-CB-6," which was consolidated for the purpose of hearing before the Trial Examiner with Case No. 9-CB-5, entitled "In the Matter of International Typographical Union, and its agents Woodruff Randolph, Larry Taylor, Elmer Brown, and Don Hurd and American Newspaper Publishers Association."

In support of this petition the Board respectfully shows:

(1) Respondents are labor organizations engaged in promoting and protecting the interests of their members in the State of Illinois, within this judicial circuit where

the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10(e) of the National Labor Relations Act, as amended.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on October 28, 1949, duly stated its findings of fact and conclusions of law, and issued an order directed to the Respondents, and their officers, agents, and representatives.

So much of the aforesaid order as relates to this proceeding provides as follows:

ORDER.

Upon the entire record in the case, pursuant to Section 10 (c) of the National Labor Relations Act as amended, the National Labor Relations Board hereby orders that:

1. Respondents International Typographical Union, and Chicago Typographical Union, No. 16, and their officers, agents and representatives, shall:

(a) Cease and desist from:

(1) Threatening to take strike action, or directing, instigating, or encouraging employees to engage in or to threaten to engage in, strike action, or approving or ratifying strike action, taken by employees, for the purpose of requiring employers, either non-contractually or as a matter of contractual obligation, to violate Section 8 (a) (3) by discriminating with respect to the employment or conditions of employment of any employee;

(2) In any other manner causing or attempting to cause employers to discriminate against employees in violation of Section 8 (a) (3) of the Act;

(3) Refusing by specific refusal, or insistence upon a 60-day cancellable contract, or any other means, to bargain collectively as the exclusive representatives of the employees in the unit herein found to be appropriate, so long as they are the representatives of the employees of the unit herein found to be appropriate.

(b) Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(1) Upon request, bargain collectively as the exclusive representatives of the employees in the unit herein found to be appropriate with the Employers or their representatives and if an understanding is reached embody such understanding in a signed agreement having a reasonable duration;

(2) Post immediately at conspicuous places at the business office of the Respondent Local, and at all other places where notices or communications to members of Respondent Local are customarily posted, and publish in the Typographical Journal, official paper of the Respondent International Typographical Union, a copy of the notice attached hereto and marked Appendix A. This notice shall be signed by a duly authorized officer of the International Typographical Union and by a duly authorized officer of the Chicago Typographical Union No. 16, and shall remain so posted and maintained for a period of 60 days;

(3) Notify the Regional Director for the Ninth Region in writing, within ten (10) days from the date of this Order, what steps the Respondent have taken to comply herewith.

(3) On October 28, 1949, the Board's Decision and Order was served upon Respondents by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondent's counsel.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondents and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon so much of the order

made thereupon as set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board, and requiring Respondents, and their officers, agents, and representatives to comply therewith. The Board further prays that this Honorable Court, in enforcing said order, shall provide that the afore-mentioned notice to be posted by Respondents, marked "Appendix A," shall specifically recite that the Board's order has been enforced by a decree of this Court so that the introductory clause of the notice shall read as follows: "APPENDIX A, NOTICE TO ALL OFFICERS, REPRESENTATIVES, AGENTS AND MEMBERS OF THE INTERNATIONAL TYPOGRAPHICAL UNION, pursuant to a decre of the United States Court of Appeals for the Seventh Circuit enforcing a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that: * * *"

National Labor Relations Board
By /s/ A. Norman Somers
A. Norman Somers
Assistant General Counsel

Dated at Washington, D. C.
this 26th day of January 1951.

APPENDIX A

NOTICE TO MEMBERS OF CHICAGO TYPOGRAPHICAL UNION NO. 16 PURSUANT TO THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby give notice that:

We Will Not in any manner promulgate, pursue, observe, or in anywise give effect to any policy, practice, or course of conduct, including without limitation conditions of employment and contracts containing provisions for cancellation of an entire agreement upon 60 days' notice, an object of which is to cause, or which in any manner causes or attempts to cause, the employer members of the Chicago Newspaper Publishers Association, or any other employer, to discriminate against employees in regard to hire or tenure of employment, or any term or condition of employment, because of non-membership in Chicago Typographical Union No. 16 and/or International Typographical Union, except in accordance with the provisos to Section 8 (a) (3) of the National Labor Relations Act.

We Will Not in any other manner cause or attempt to cause employer members of Chicago Newspaper Publishers Association, or any other employer, to discriminate against employees in regard to their hire or tenure of employment, because of non-membership in Chicago Typographical Union No. 16 and/or International Typographical Union, except in accordance with the provisos to Section 8 (a) (3) of the National Labor Relations Act.

We Will, upon request, bargain collectively in good faith in our capacity as exclusive representatives of all employees in the bargaining unit described, with Chicago Newspaper Publishers Association, as the representatives of its member-companies, with respect to rates of pay, wages, hours of employment, and other conditions of employment, and with respect

to the negotiation of a bilateral collective bargaining contract for a definite term of reasonable duration in conformity with the practice and custom established by past bargaining with the Chicago Newspaper Publishers Association, and, if an agreement is reached, we will embody such agreement in a written contract to be signed by Chicago Typographical Union No. 16 and approved by International Typographical Union.

The bargaining unit is:

All employees of the composing rooms of the member-companies of Chicago Newspaper Publishers Association (Chicago Daily News, Inc., Illinois Publishing and Printing Company, The Journal of Commerce Publishing Company, Sun and Times Co., and Tribune Company) who perform work pertaining to printing, including proof-press operators, but excluding office boys, metal men, advertising dispatch boys, clerical and other employees, and all supervisors as defined in the National Labor Relations Act as amended.

Chicago Typographical Union No. 16
By.....
Title

International Typographical Union
By.....
Title

Dated .....

This notice must remain posted for sixty (60) days from the dates hereof, and must not be altered, defaced, or covered by other material.

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit

National Labor Relations Board, Petitioner v. International Typographical Union; and its agents Woodruff Randolph, Larry Taylor, Elmer Brown, Don Hurd, Respondents	10331

PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States Court of Appeals for the Seventh Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. III, Secs. 151, *et seq.*), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against Respondents, International Typographical Union, and its officers, agents, and representatives, and Woodruff Randolph, Larry Taylor, Elmer Brown, and Don Hurd, their agents and successors. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of International Typographical Union, and its agents Woodruff Randolph, Larry Taylor, Elmer Brown, and Don Hurd and American Newspaper Publishers Association, Case No. 9-CB-5," which was consolidated for the purpose of hearing before the Trial Examiner with Case No. 13-CB-6, entitled "In the Matter of Chicago Typographical Union No. 16 and International Typographical Union and Chicago Newspaper Publishers Association on behalf of The Chicago Daily News, Inc., Illinois Publishing and Printing Company, The Journal of Commerce Publishing Company, Sun and Times Co., and Tribune Company."

In support of this petition the Board respectfully shows:

(1) Respondents, a labor organization and its agents, are engaged in promoting and protecting the interests of their members in the State of Illinois, within this judicial circuit where the unfair labor practices occurred.

This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to whom reference is hereby made, the Board on October 28, 1949, duly stated its findings of fact and conclusions of law, and issued an order directed to the Respondents, International Typographical Union, and its officers, agents, and representatives, and Woodruff Randolph, Larry Taylor, Elmer Brown, and Don Hurd, their agents and successors. So much of the aforesaid order as relates to this proceeding provides as follows:

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the Labor Management Relations Act, the National Labor Relations Board hereby orders that:

1. Respondent International Typographical Union, and its officers, agents, and representatives, and

2. Woodruff Randolph, Larry Taylor, Elmer Brown, and Don Hurd, their agents and successors, shall:

(a) Cease and desist from:

(1) Threatening to take strike action, or directing, instigating, or encouraging employees to engage in or to threaten to engage in, strike action, or approving or ratifying strike action taken by employees, for the purpose of requiring employers either non-contractually or as a matter of contractual obligation to violate Section 8 (a) (3), by discriminating with respect to the employment or conditions of employment of any employee.

(2) In any other manner causing or attempting to cause employers to discriminate against employees in violation of Section 8 (a) (3) of the Act.

(3) In any manner restraining or coercing employers in the selection of their representatives for the purposes of collective bargaining or the adjustment of grievances.

(b) Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(1) Post immediately in conspicuous places at all halls and offices of the Respondent I. T. U. and its Locals, and all other places where notices to members are customarily posted, and publish in the Typographical Journal, official paper of the Respondent International Typographical Union, a copy of the notice attached hereto and marked Appendix A. These notices shall be signed by a duly authorized officer of the Respondent, International Typographical Union and by the individual Respondents herein or their successors in office, and shall remain so posted and maintained for a period of 60 days.

(2) Notify the Regional Director for the Ninth Region in writing, within ten (10) days from the date of this Order, what steps the Respondents have taken to comply herewith.

(3) On October 28, 1949, the Board's Decision and Order was served upon Respondents by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondents' counsel.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondents and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon so much of the order made thereupon as set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board, and requiring Respondents to comply therewith. The Board further prays that this Honorable Court, in enforcing said order, shall provide that the afore-mentioned notice to be posted by Respondents, marked "Appendix A," shall specifically recite that the Board's order has been enforced by a decree

of this Court so that the introductory clause of the notice shall read as follows: "APPENDIX A, NOTICE TO ALL OFFICERS, REPRESENTATIVES, AGENTS, AND MEMBERS OF THE INTERNATIONAL TYPOGRAPHICAL UNION, pursuant to a decree of the United States Court of Appeals for the Seventh Circuit enforcing a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that: • • •"

National Labor Relations Board
By /s/ A. Norman Somers
A. Norman Somers
Assistant General Counsel

Dated at Washington, D. C.
this 26th day of January, 1951.

APPENDIX A

NOTICE
TO ALL OFFICERS, REPRESENTATIVES, AGENTS AND MEMBERS OF THE INTERNATIONAL TYPOGRAPHICAL UNION PURSUANT TO A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

We Will Not threaten to take strike action, or direct, instigate, or encourage employees to engage in or to threaten to engage in, strike action, or ratify strike action taken by employees, for the purpose of requiring employers, either non-contractually or as a matter of contractual obligation to violate Section 8 (a) (3) of the Act by discriminating with respect to the employment or conditions of employment of any employee.

We Will Not in any other manner cause or attempt to cause employers to discriminate against employees in violation of Section 8 (a) (3) of the Act.

We Will Not in any manner restrain or coerce employers in the selection of their representatives for the purposes of collective bargaining or the adjustment of grievances.

International Typographical Union

By.....
President

Elmer Brown
Don Hurd
Woodruff Randolph
Larry Taylor

IN THE UNITED STATES COURT OF APPEALS
for the Seventh Circuit

National Labor Relations Board,
Petitioner
vs.
International Typographical Union; and its agents Woodruff Randolph, Larry Taylor, Elmer Brown, and Don Hurd,
Respondents
No.

National Labor Relations Board
Petitioner
vs.
Chicago Typographical Union No. 16 and International Typographical Union,
Respondents
No.

ON PETITIONS FOR ENFORCEMENT OF ORDERS OF THE NATIONAL LABOR RELATIONS BOARD

MOTION OF THE NATIONAL LABOR RELATIONS BOARD FOR CONSOLIDATION OF CAUSES FOR THE PURPOSES OF FILING RECORD, BRIEFING AND ARGUMENT.

To the Honorable, the Judges of the
United States Court of Appeals for
the Seventh Circuit:

Comes now the National Labor Relations Board by A. Norman Somers, its Assistant General Counsel, and moves the Court for an order consolidating the above-entitled causes for the purposes of filing record, briefing and argument on the petitions for enforcement of the Board's orders in said causes. In support of such motion the Board respectfully shows as follows:

1. The Board has on this date and together with this motion filed petitions with this Court for decrees enforc-

ing its orders against International Typographical Union and its agents Woodruff Randolph, Larry Taylor, Elmer Brown, and Don Hurd, respondents in the cause designated on the records of the Board as Case No. 9-CB-5, entitled "In the Matter of International Typographical Union, and its agents Woodruff Randolph, Larry Taylor, Elmer Brown, and Don Hurd and American Newspaper Publishers Association;" and against Chicago Typographical Union No. 16 and International Typographical Union, respondents in the cause designated on the records of the Board as Case No. 13-CB-6, entitled "In the Matter of Chicago Typographical Union No. 16 and International Typographical Union and Chicago Newspaper Publishers Association on behalf of the The Chicago Daily News, Inc., Illinois Publishing and Printing Company, The Journal of Commerce Publishing Company, Sun and Times Co., and Tribune Company."

2. The above-entitled causes were consolidated before the Board for purposes of hearing, and accordingly have a common record.

3. Many issues of fact and of law involved in these proceedings are common to both causes. Although the Board issued separate decisions and orders for each cause, the decision and order in Case No. 13-CB-6 incorporated by reference the findings of fact and grounds for decision in Case No. 9-CB-5 insofar as the issues in the two cases are common.

A. Consolidation of the causes would conserve the Court's time as well as the time of the parties, would materially reduce the printing expense, would prevent unnecessary duplication, and would otherwise serve the convenience of the Court.

Wherefore, the Board prays that its motion be granted.

/s/ A. Norman Somers
A. Norman Somers
Assistant General Counsel
National Labor Relations Board.

Dated at Washington, D. C.
this 26th day of January, 1951.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit

Chicago 10, Illinois
January 31, 1951

Before OTTO KERNER, Circuit Judge.

No. 10331
National Labor Relations Board
Petitioner

vs.

International Typographical Union; and Its Agents Woodruff Randolph, Larry Taylor, Elmer Brown and Don Hurd,
Respondents

No. 10332
National Labor Relations Board
Petitioner

vs.

Chicago Typographical Union No. 16 and International Typographical Union,
Respondent

} Petitions for Enforcement of Orders of the National Labor Relations Board

On motion of counsel for the Petitioner, the National Labor Relations Board, it is ordered that the above entitled causes be, and they are hereby, consolidated for the purposes of filing the record, briefing and argument on the petitions for enforcement of the Board's orders in said causes.

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit
No. 10329

American Newspaper Publishers Association,
Petitioner,

v.

National Labor Relations Board,
and
International Typographical Union, and
Its Agents Woodruff Randolph, Larry
Taylor, Elmer Brown, and Don Hurd,
Respondents.

PETITION TO REVIEW AND MODIFY AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

To the Honorable Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

American Newspaper Publishers Association, a New York membership association, being aggrieved by a final order of the National Labor Relations Board, herein called the "Board", entered on October 28, 1949, denying in part the relief sought, respectfully petitions this Honorable Court to review and modify the Order. The Order in question was issued by the Board in an unfair labor practice proceeding designated by the Board as: "In the Matter of International Typographical Union, and its agents Woodruff Randolph, Larry Taylor, Elmer Brown, and Don Hurd, and American Newspaper Publishers Association, Case No. 9-CB-5."

JURISDICTION.

1. Petitioner is a New York membership corporation having a membership of more than 700 publishers who produce and publish newspapers throughout the United States including numerous publishers who have their principal place of business within this circuit.

2. The International Typographical Union, herein called the "ITU" is a labor organization affiliated with the American Federation of Labor and has its headquarters and national offices at Indianapolis, Indiana, within this circuit. Woodruff Randolph, Larry Taylor, Elmer Brown, and Don Hurd were, at all times material herein,

respectively, President, First Vice-President, Second Vice-President and Secretary-Treasurer and agents of the ITU.[1]

3. The Board's Order, which is the subject of this petition, is a final order denying in part the relief sought by petitioner, and petitioner is a person aggrieved by such Order.

4. By reason of the facts alleged in paragraphs 1, 2 and 3 hereof, this Honorable Court has jurisdiction of this Petition, and of the matters in dispute herein, under Section 10(f) of the National Labor Relations Act, as amended, herein called the "ACT", 49 Stat. 449, 29 U.S.C.A. Section 160(f).

PROCEEDINGS BEFORE THE BOARD.

1. This case arises from a charge filed by petitioner with the Cincinnati Regional Office of the Board on November 17, 1947, on behalf of petitioner's member newspaper publishers. The charge alleged, in general, that the ITU and certain of its officers and agents had engaged and were engaging in unfair labor practices prohibited by the Act while representing employees of said newspaper publishers.

2. On November 21, 1947, the General Counsel of the National Labor Relations Board, herein called the "General Counsel", issued his complaint against the ITU and its agents, herein collectively referred to as the "ITU." The complaint alleged that the ITU, by certain conduct set forth therein, had violated Sections 8(b)(1)(A), 8(b)(1)(B), 8(b)(2), and 8(b)(6) of the Act.

3. The ITU filed a special appearance questioning the constitutionality of the Act, the jurisdiction of the Board, and the validity of the Board's Rules and Regulations. Subsequently, the ITU, without waiving its contentions with respect to these questions, filed an answer containing a general denial of the material allegations of the complaint.

4. On March 27, 1948, pursuant to a petition filed by Jack G. Evans, the Regional Director of the Board's

[1] According to "The Typographical Journal" for January, 1951, (the official publication of the respondent ITU) Larry Taylor has been succeeded by Charles M. Lyon as First Vice-President; and Elmer Brown has been succeeded by Harold H. Clark as Second Vice-President.

Ninth Region, for and on behalf of the Board under the provisions of Section 10(j) of the Act, the United States District Court, Southern District of Indiana, the Honorable Judge Swygert presiding, issued a temporary injunction against the ITU restraining it and certain of its officers and agents, pending final adjudication by the Board of the matters involved, from engaging in certain specified conduct which the Court found to be violative of Sections 8(b)(1)(A) and 8(b)(2) of the Act.[2]

5. On various dates from December 9, 1947, to May 18, 1948, a hearing upon the aforesaid complaint was held at Indianapolis, Indiana; Chicago, Illinois; Detroit, Michigan; Buffalo, New York; Albany, New York; and Washington, D. C., before Arthur Leff, the Trial Examiner duly designated by the Board. During the course of the hearing the Trial Examiner granted motions to intervene filed by Southern Newspaper Publishers Association and Inland Daily Press Association, herein called the "Intervenors". On January 14, 1948, the General Counsel entered an order consolidating, for the purpose of hearing only, this proceeding with *Matter of Chicago Typographical Union and International Union et ano*, Case No. 13-CB-6.

6. On August 8, 1948, the Trial Examiner issued his Intermediate Report. The Trial Examiner found in substance that the ITU had caused or attempted to cause, by certain conduct, a substantial number of newspaper publishers throughout the United States to employ in their mailing and composing rooms only members of the ITU. The Trial Examiner further found that the ITU had restrained or coerced a substantial number of newspaper publishers to cause them to continue hiring only union foremen. The Trial Examiner found that this conduct, with respect to the composing and mailing room employees, was in violation of Sections 8(b)(2) and 8(b)(1)(A) of the Act, and that the ITU activity relative to the employment of union foremen was in violation of Section 8(b)(1)(B) of the Act. With respect to the remaining portions of the complaint, the Trial Exam-

[2] **Evans, Regional Director of the National Labor Relations Board v. International Typographical Union et al.**, 76 F. Supp. 881. The Board did not seek any temporary injunction against the ITU with respect to that activity of the ITU which the complaint alleged to have violated Sections 8(b)(6) or 8(b)(1)(B) of the Act.

iner found either that the complaint failed to allege a violation of the Act or that the evidence adduced at the hearing did not establish that the ITU had engaged in the conduct attributed to it by the complaint.

7. Subsequently the ITU filed with the Board general and specific exceptions to the affirmative findings of the Trial Examiner's Report. The General Counsel, the Intervenors and your petitioner filed exceptions to the Intermediate Report and briefs in support of such exceptions.

The exceptions and brief filed by the ITU urged the Board to find that the ITU had not violated the Act in any respect.

The General Counsel, the Intervenors and your petitioner, on the other hand, asked the Board in their exceptions to affirm the Trial Examiner's findings insofar as such findings supported the complaint and to reverse his findings and conclusions of law which led to his dismissal of portions of the complaint.

8. On October 14, 1948, as the result of contempt proceedings instituted by the General Counsel for and on behalf of the Board, the United States District Court, Southern District of Indiana, the Honorable District Judge Swygert presiding, adjudged and decreed the ITU to be in contempt of said Court for having failed and refused to obey its decree granting the temporary injunction.[3]

9. On October 28, 1949, more than 14 months after the Trial Examiner had issued his Intermediate Report, the Board issued its Decision and Order. The Board found, in substance, that the ITU had threatened to strike publishers who hired non-union men, and had devised and utilized a "bargaining scheme" to enable it to carry out the threat without being impeded by the terms of a contract; and that the "bargaining scheme" was a policy adopted by the ITU either to refuse to execute any contract with the publishers or to limit the term of the contract to 60 days so as to enable the ITU to enforce its illegal closed shop demands by a strike without material delay. The Board concluded that this conduct violated Section 8(b)(2) of the Act in that it caused and/or attempted to cause the publishers to violate Section 8(a)(3)

[3] Evans, Regional Director of National Labor Relations Board, v. International Typographical Union, et al., 81 F. Supp. 675.

of the Act. The Board further found that the ITU demand that the publishers hire only ITU members as foremen and its threat to strike unless the demand was heeded was a violation of Section 8(b)(1)(B) of the Act in that it restrained or coerced publishers in the selection of their representatives for the purposes of adjusting grievances.

10. With respect to the additional practices and issues of law to which the General Counsel, the Intervenors and your petitioner directed the Board's attention by their exceptions to the Trial Examiner's Intermediate Report, the Board either declined to decide the issues involved or decided as a matter of law that the Act did not prohibit the practices. Thus the Board held that it was "unnecessary to pass upon the merits" of those exceptions relating to the specific demands of the ITU which were alleged to be violations of Section 8(b)(2), because it had already found the ITU to have violated Section 8(b)(2) by demanding under penalty of strike that publishers hire only those workers who were members of the ITU and was issuing an order to compel the ITU to remedy such unfair labor practice.[4]

The Board further held that it need not consider evidence in support of the complaint relating to events occurring after the issuance of the temporary injunction by the United States District Court, Southern District of Indiana, on March 27, 1948.[5] In explanation, the Board stated in its Decision that "conduct engaged in under an injunction is necessarily ambiguous, it being impossible to determine whether such conduct is voluntary or springs from the compulsion of the injunction," and that in any event findings with respect to such so-called "post-injunction" conduct "could add nothing to the normal order which we shall otherwise issue to remedy the . . . [ITU's] earlier violation of the Act."

11. The Board decided further that the unfair labor practice defined by Section 8(b)(1)(A) and Section 7 of the Act as restraining or coercing employees in the exercise of the right "to self-organization, to form, join

[4] Board member Reynolds was of the opinion that the Board should pass, as a matter of policy, on these issues, but did not indicate what his decision thereon would be.

[5] Evans v. ITU, 76 F. Supp. 881. See subparagraph No. 4 of this subdivision.

or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activity for the purposes of collective bargaining or other mutual aid or protection, and . . . the right to refrain from any or all of such activities . . . " was "limited to situations involving actual or threatened economic reprisals and physical violence by unions or their agents against specific individuals or groups of individuals in an effort to compel them to join a union or to cooperate in a union's strike activity." The Board dismissed all except one of the allegations of the complaint which alleged violations of Section 8(b)(1)(A) of the Act on the basis of this "narrow construction."[6]

12. Finally, the Board held that the ITU had not violated Section 8(b)(6) of the Act.

13. Based on its findings summarized above, the Board issued an Order requiring the ITU and its officers, agents and representatives, and Woodruff Randolph, Larry Taylor, Elmer Brown, and Don Hurd, their agents and successors, (1) to cease and desist from violating Sections 8(b)(2) and 8(b)(1)(B) of the Act and (2) to post certain notices to the employees. The Order dismissed the complaint insofar as it alleged violations of Sections 8(b)(1)(A) and 8(b)(6) of the Act.

14. The Order issued by the Board provided as follows:

ORDER

Upon the entire record in the case, and pursuant to Section 10(c) of the Labor Management Relations Act, the National Labor Relations Board hereby orders that:

1. Respondent International Typographical Union, and its officers, agents, and representatives, and

2. Woodruff Randolph, Larry Taylor, Elmer Brown, and Don Hurd, their agents and successors, shall:

[6] The exception relates to the allegation that the ITU threatened to expel from its membership those who refused to cooperate in its illegal policies. The Board held that the proviso to Section 8(b)(1)(A) protected this coercion even though expulsion would result in loss of employment and other economic benefits which were dependent upon such membership.

(a) Cease and desist from:

(1) Threatening to take strike action, or directing, instigating, or encouraging employees to engage in or to threaten to engage in, strike action, or approving or ratifying strike action taken by employees, for the purpose of requiring employers either non-contractually or as a matter of contractual obligation to violate Section 8(a)(3), by discriminating with respect to the employment or conditions of employment of any employee.

(2) In any other manner causing or attempting to cause employers to discriminate against employees in violation of Section 8(a)(3) of the Act.

(3) In any manner restraining or coercing employers in the selection of their representatives for the purposes of collective bargaining or the adjustment of grievances.

(b) Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(1) Post immediately in conspicuous places at all halls and offices of the Respondent ITU and its Locals, and all other places where notices to members are customarily posted, and publish in the Typographical Journal, official paper of the Respondent International Typographical Union, a copy of the notice attached hereto and marked Appendix A. These notices shall be signed by a duly authorized officer of the Respondent, International Typographical Union and by the individual Respondents herein or their successors in office, and shall remain so posted and maintained for a period of 60 days.

(2) Notify the Regional Director for the Ninth Region in writing, within ten (10) days from the date of this Order, what steps the Respondents have taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges that the Respondents coerced and restrained employees in violation of Section 8(b)(1)(A) of the Act; that they caused or attempted to cause employers to pay for services not performed or not to be performed in violation of Section 8(b)(6) of the Act.

15. The notice required by the Order to be posted by the ITU reads as follows:

"N O T I C E

"TO ALL OFFICERS, REPRESENTATIVES, AGENTS AND MEMBERS OF THE INTERNATIONAL TYPOGRAPHICAL UNION

"PURSUANT TO
"A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT threaten to take strike action, or direct, instigate, or encourage employees to engage in or to threaten to engage in, strike action, or ratify strike action taken by employees, for the purpose of requiring employers either non-contractually or as a matter of contractual obligation to violate Section 8(a)(3) of the Act by discriminating with respect to the employment or conditions of employment of any employee.

WE WILL NOT in any other manner cause or attempt to cause employers to discriminate against employees in violation of Section 8(a)(3) of the Act.

WE WILL NOT in any manner restrain or coerce employers in the selection of their representatives for the purposes of collective bargaining or the adjustment of grievances.

INTERNATIONAL TYPOGRAPHICAL UNION
By.....
President
Woodruff Randolph
Elmer Brown
Larry Taylor
Don Hurd

16. The Board's Decision and Order set forth herein being a final adjudication by the Board of the matters alleged in the General Counsel's Complaint, had the effect of terminating, according to the decree's terms and those of the Act, the temporary injunction issued against the ITU as described in paragraph 4 of this subdivision.

17. All of the proceedings before the Board in this matter, including your petitioner's charge filed November 17, 1947, the General Counsel's complaint issued November 21, 1947, the temporary injunction issued by the United States District Court, Southern District of Indiana, on March 27, 1948, and the Decision and Order of the Board issued October 28, 1949, have resulted in there being as of the date of this petition no legal restraint existent against the ITU's continuation and/or renewal of even such of its conduct as the Board found in its Decision and Order to be violative of the Act.[1]

STATEMENT OF POINTS

In support of its Petition to Review and Modify the Order issued by the Board in this proceeding, Petitioner relies upon the following points. With respect to each of them, Petitioner contends that the Board's ultimate finding or conclusion (including all preliminary and subsidiary findings upon which such ultimate finding or conclusion is based) is erroneous as a matter of law, and is not supported by the evidence or by any credible or substantial evidence on the record considered as a whole:

1. The Board erred in holding that the ITU had not violated Section 8(b)(6) of the Act.

2. The Board erred in holding that by causing and attempting to cause publishers to employ only members of the ITU in their composing and mailing rooms the ITU had not violated Section 8(b)(1)(A) of the Act.

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[1] This case along with the consolidated Chicago Typographical Union case mentioned in paragraph 5 of this subdivision was formally submitted to the Board on October 15, 1948. The Board did not hear oral argument until May 24, 1949, and did not decide the cases until October 28, 1949. The ITU was granted 10 days (subsequently expanded to 30 days) from October 29, within which to notify the Board of the steps taken towards compliance. On November 14, 1949, in a communication addressed to the officers and members of all subordinate unions, the ITU notified them, inter alia, as follows:

"The injunction against us has now been dissolved. The order of the NLRB has no binding force until enforced by a court."

When the ITU failed to notify the Board of their intentions in respect of compliance within the 10 day period permitted them, this petitioner formally moved on December 1, 1949, that the Board proceed under Section 10(e) of the Act to enforce its Order. On December 8, 1949, the Board notified all parties that it would proceed with enforcement. Between December 8, 1949, and January 24, 1951 (the date of the drafting of this petition) the Board had not asked any court to enter a decree enforcing its orders. Nor has the ITU complied with the orders or served any formal notice of any intention to comply.

3. The Board erred in failing to decide the issues raised in the complaint as to whether the ITU's insistence that the employers acquiesce in and accept certain of its specific demands constituted a violation of Section 8(b)(2) of the Act.

4. The Board erred in not finding that the ITU had violated Section 8(b)(2) of the Act by causing or attempting to cause the employers to agree to or acquiesce in certain specific demands as set forth in the complaint.

5. The Board erred in refusing to pass upon the ITU's so-called "post-injunction" conduct, and in not finding that the ITU's "post-injunction" demands were at most insubstantial variants of its earlier demands and violative of Sections 8(b)(1)(A), 8(b)(1)(B), 8(b)(2) and 8(b)(6) of the Act.

6. The Board erred in refusing to find that the ITU had violated Sections 8(b)(1)(A) and 8(b)(2) of the Act by requiring that the publishers hire only members of the ITU as foremen.

7. The Board erred in holding that the proscription of Section 8(b)(1)(A) was limited to "situations involving actual or threatened economic reprisals and physical violence by unions or their agents against specific individuals or groups of individuals in an effort to compel them to join a union or to cooperate in a union's strike activities."

8. The Board erred in holding that a union's refusal to bargain in violation of Section 8(b)(3) of the Act was not also a violation of Section 8(b)(1)(A) of the Act.

9. The Board erred in not finding that the ITU had illegally refused to bargain and that this conduct was a violation of Section 8(b)(1)(A) of the Act.

10. The Board erred in reversing the Trial Examiner's finding that the ITU had violated Section 8(b)(1)(A) of the Act by causing and attempting to cause publishers to discriminate against employers in violation of Section 8(a)(3) of the Act.

11. The Board erred in holding that the proviso to Section 8(b)(1)(A) of the Act permitted the ITU to restrain or coerce employees to cooperate in the enactment of its conduct violative of the Act by threatening to expel recalcitrants from its membership under provisions of its "laws" and thereby to deprive them of certain economic benefits which were conditioned upon such membership.

12. The Board erred in not granting the relief sought against the ITU in this proceeding.

PRAYER

WHEREFORE, Petitioner respectfully prays:

1. That the National Labor Relations Board be required to certify for filing with this Court a transcript of the entire record in this proceeding before the Board;

2. That this Honorable Court review the Decision and Order of the Board;

3. That this Honorable Court modify the Decision and Order of the Board and make and enter a decree in the following terms and words, to wit:

"1. The respondent International Typographical Union, and its officers, agents and representatives, and

"2. Woodruff Randolph, Larry Taylor, Elmer Brown, and Don Hurd, their agents and successors, shall:

(a) Cease and desist from:

(1) Threatening to take strike action, or directing, instigating, or encouraging employees to engage in or threaten to engage in, strike action, or approving or ratifying strike action taken by employees, for the purpose of requiring employers either non-contractually or as a matter of contractual obligation to violate Section 8(a)(3), by discriminating with respect to the employment or conditions of employment of any employee;

(2) In any other manner causing or attempting to cause employers to discriminate against employees in violation of Section 8(a)(3) of the Act;

(3) Causing or attempting to cause any employer to pay or deliver or agree to pay or deliver money or other things of value for the reproduction in type of material contained in matrices which had already been produced elsewhere than in said employer's own composing room when such reproduced type was not thereafter used nor intended to be used;

(4) In any other manner causing or attempting to cause an employer to pay or deliver or agree to pay or deliver any money, or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed;

(5) In any manner restraining or coercing employers in the selection of their representatives for the purpose of collective bargaining or the adjustment of grievances;

(b) Take the following affirmative action, which will effectuate the policies of the Act:

(1) Post immediately in conspicuous places at all halls and offices of the Respondent ITU and its Locals, and all other places where notices to members are customarily posted, and publish in the Typographical Journal, official paper of the Respondent International Typographical Union, a copy of the notice attached hereto and marked Appendix A. These notices shall be signed by a duly authorized officer of Respondent, International Typographical Union and by the individual Respondents herein or their successors in office, and shall remain so posted and maintained for a period of 60 days;

(2) Notify the Regional Director for the Ninth Region in writing, within ten (10) days from the date of this Order, what steps the Respondents have taken to comply herewith.

APPENDIX A

NOTICE
TO ALL OFFICERS, REPRESENTATIVES, AGENTS AND MEMBERS OF THE INTERNATIONAL TYPOGRAPHICAL UNION

Pursuant to a Decree of the United States Court of Appeals, modifying a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT threaten to take strike action, or direct, instigate, or encourage employees to engage in or to threaten to engage in, strike action, or ratify strike action taken by employees, for the purpose of requiring employers either non-contractually or as a matter of contractual obligation to violate Section 8(a)(3) of the Act by discriminating with respect to the employment or conditions of employment of any employee;

WE WILL NOT in any other manner cause of attempt to cause employers to discriminate against employees in violation of Section 8(a)(3) of the Act;

WE WILL NOT cause or attempt to cause any employer to pay or deliver or agree to pay or deliver money or other thing of value for the reproduction in type of matrices which have already been produced elsewhere than in said employer's own composing room when such reproduced type is not thereafter used nor intended to be used;

WE WILL NOT in any other manner cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed;

WE WILL NOT in any manner restrain or coerce employers in the selection of their representatives for the purpose of collective bargaining or the adjustment of grievances.

INTERNATIONAL TYPOGRAPHICAL UNION

By .....

President
Woodruff Randolph
Elmer Brown
Larry Taylor
Don Hurd

4. That this Honorable Court find and decide that the Board erred in failing and refusing to decide the validity of those portions of the complaint herein alleging that the ITU had violated Section 8(b)(2) of the Act by demanding and obtaining in its contracts with employers the inclusion of the "miscellaneous" union-security clauses of the ITU's "P-6A" contract covering, inter alia, the work jurisdiction of the ITU, the competency of composing room employees, and the operation of ITU "laws" during the contract term.

5. That this Honorable Court find and decide that the Board erred in failing and refusing to consider whether the ITU's so-called "post-injunction" conduct supported the allegations of the complaint herein insofar as such conduct constituted a variation of the ITU's conduct prior to March 27, 1948, the date said injunction issued.

6. That this Honorable Court find and decide that the Board erred in not concluding as a matter of law that each of the unfair labor practices defined by Sections 8(b)(1)(B), 8(b)(2), 8(b)(3), 8(b)(4)(A), 8(b)(4)(B), and 8(b)(6) of the Act also constitutes a violation of Section 8(b)(1)(A) of the Act.

7. That this Honorable Court find and decide that the Board erred in not concluding as a matter of law that the proviso to Section 8(b)(1)(A) of the Act did not permit the ITU to restrain or coerce employees to cooperate in the enactment of its conduct violative of the Act by threatening to expel recalcitrants from its membership under provision of ITU laws and thereby to deprive them of certain economic benefits which were conditioned upon such membership.

8. That this Honorable Court, upon making and entering the decree requested in subparagraph 3 of this Prayer, remand the remainder of this case to the Board with instructions that the Board make findings of fact concerning those allegations of the complaint dealing with (1) the "miscellaneous" union-security clauses of the ITU's "P-6A" contract mentioned in subparagraph 4 of this Prayer; (2) the so-called "post-injunction" conduct of the ITU mentioned in subparagraph 5 of this Prayer; and (3) the restraint and coercion of employees described in subparagraph 7 of this Prayer.

9. That this Honorable Court further direct the Board to issue a Supplemental Decision and Order in this case

consistent with any decision this Honorable Court may issue herein granting all or any part of petitioner's Prayer contained in subparagraphs 4, 5, 6, 7 and 8 thereof.

10. That Petitioner be granted such other relief as may be just and proper.

AMERICAN NEWSPAPER
PUBLISHERS ASSOCIATION
By Elisha Hanson
Elisha Hanson
Its Attorney.

Arthur B. Hanson
Hanson, Lovett & Dale
729 15th Street, N. W.
Washington 5, D. C.

OF COUNSEL
JANUARY 24, 1951.

DISTRICT OF COLUMBIA) ss.

Elisha Hanson, being first duly sworn on oath deposes and says that he is General Counsel of American Newspaper Publishers Association, Petitioner above named, that he has read the foregoing Petition and knows the contents thereof; and that the allegations contained therein are true to the best of his knowledge, information and belief.

Elisha Hanson

Subscribed and sworn to before me this 24th day of January, 1951, as witness my hand and notarial seal.

Virginia McClean
Notary Public.

(Seal)
My Commission expires January 31, 1952.

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit

No. 10329

American Newspaper Publishers Association,
Petitioner,

v.

National Labor Relations Board,

and

International Typographical Union, and its Agents Woodruff Randolph, Larry Taylor, Elmer Brown, and Don Hurd,
Respondents.

ANSWER OF NATIONAL LABOR RELATIONS BOARD TO PETITION TO REVIEW AND MODIFY ITS ORDER, AND MOTION TO STRIKE PORTIONS OF SAID PETITION

To the Honorable, the Judges of the United States Court of Appeals for the Seventh Circuit:

Comes now the National Labor Relations Board, herein called the Board, and pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. Supp. III, Sec. 141 *et seq.*), herein called the Act, files its answer to the petition to review and modify an order of the Board, and its motion to strike portions of said petition.

ANSWER TO PETITION TO REVIEW

1. The Board admits the allegations contained in paragraphs 1 and 2, under the title "Jurisdiction," of the petition to review.

2. The Board admits in part and denies in part the allegations contained in paragraph 3, under the title "Jurisdiction," of the petition to review as follows: The Board admits that petitioner is a person aggrieved solely insofar as the Board's order finally denies in whole or in part relief sought, but denies that petitioner is a person aggrieved in any other respect.

3. The Board admits the allegation contained in paragraph 4, under the title "Jurisdiction," of the petition to review only insofar as petitioner is a person aggrieved within the meaning of Section 10 (f) of the Act.

4. Answering the allegations in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 under the title "Proceedings before the Board," of the petition to review, the Board prays reference to the certified copy of the entire record of the proceedings before the Board, filed herein, for a full and exact statement of the pleadings, evidence, exhibits, rulings, findings of fact, conclusions of law and order of the Board, and all other proceedings had in this matter before the Board.

5. The Board denies each and every allegation of error contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 under the title "Statement of Points" in the petition to review, and avers that its order is proper in all respects.

Wherefore, the Board respectfully prays this Honorable Court that said petition, insofar as it prays that the Board's order be modified or enforced, or that the case be remanded to the Board, be denied.

MOTION TO STRIKE PORTIONS OF THE PETITION TO REVIEW

In further response to the petition to review the Board respectfully moves that this Honorable Court strike the following portions from the said petition:

1. Paragraph 3 under the title "Prayer" in its entirety, and in support thereof the Board shows as follows:

a) Insofar as paragraph 3 and Appendix A thereof prays this Court to enter a decree in the terms of the Board's order, petitioner is not a person aggrieved within the meaning of Section 10 (f) of the Act, and therefore has no standing to seek enforcement of the Board's order.

b) Insofar as paragraph 3 and Appendix A thereof prays that this Court enter a decree providing a remedy for violations of the Act, the allegations with respect to which the Board dismissed, the limit of this Court's reviewing power is to pass upon the validity of such dismissal; its power to issue a reme-

dial decree does not arise until after the Board, applying correct principles of law, has exercised its discretion in framing the appropriate remedy.

2. The following words from the caption: "and International Typographical Union, and its agents Woodruff Randolph, Larry Taylor, Elmer Brown, and Don Hurd." In support thereof the Board shows as follows:

a) The International Typographical Union and its named agents are not proper respondents to a petition to review the order of the Board since petitioner has no standing to request a decree against the International Typographical Union or its agents and the Court has no power to issue a decree against them except upon petition of the Board to enforce an order of the Board against them.

/s/ A. Norman Somers
A. Norman Somers
Assistant General Counsel
National Labor Relations Board

Dated this 28th day of
February, 1951 at
Washington, D. C.

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit

National Labor Relations Board,
Petitioner

v.

International Typographical Union; and its agents Woodruff Randolph, Larry Taylor, Elmer Brown, Don Hurd,

Respondents

National Labor Relations Board,
Petitioner

v.

Chicago Tyopgraphical Union No. 16 and International Typographical Union,

Respondents

CERTIFICATE OF THE NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary duly authorized by Section 203.87, Rules and Regulations of the National Labor Relations Board—Series 5, as amended (redesignated Section 102.87, 14 F. R. 78), hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record (with the exception of Board's exhibit 82, which consists of pages 19 and 20 of the January issue of Typographical Journal, and Respondents' exhibit 6-A thru 6-F, Mr. Grumhaus's notes on the meeting held Monday November 10th through 14th, inclusive, which cannot presently be located) of proceedings had before said Board, said proceedings having been consolidated for the purpose of hearing before the Trial Examiner entitled, "In the Matter of International Typographical Union, and its agents Woodruff Randolph, Larry Taylor, Elmer Brown, and Don Hurd and American Newspaper Publishers Association, Case No. 9-CB-5," and "In the Matter of Chicago Typographical Union No. 16 and International Typographical Union and Chicago Newspaper Publishers Association on behalf of The Chicago Daily News, Inc., Illinois Publishing and Printing Company, The Journal of Commerce Publishing Company, Sun and Times Co.,

and Tribune Company, Case No. 13-CB-6," such transcript including the pleadings and testimony and evidence upon which the orders of the Board in said proceedings were entered and including also the findings and orders of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Order designating Arthur Leff Trial Examiner, for the National Labor Relatiohs Board in Case No. 9-CB-5, dated December 9, 1947.

(2) Copy of order designating Arthur Leff, Trial Examiner, for the National Labor Relations Board in Case No. 13-CB-6, dated December 9, 1947.

(3) Stenographic transcript of testimony taken before Trial Examiner Leff on December 9, 1947, together with all exhibits introduced in evidence.

(4) Opposition of American Newspaper Publishers Association (Charging Party before the Board in Case No. 9-CB-5) to motion of Respondent International Typographical Union et al. (Respondents before the Board in Case No. 9-CB-5; hereinafter referred to as ITU and agents) to appeal from certain rulings of the Trial Examiner, dated December 12, 1947. (Motion to appeal is Board's Exhibit 1-K, and Board's order denying leave to appeal is Board's Exhibit 1-L, in Volume IX hereof.)

(5) Board's order, issued December 18, 1947, denying motion of Respondents ITU and agents for reconsideration of the Board's order of December 9, 1947, and referring motion of said Respondents to revoke subpoenas of December 5, 1947, to Trial Examiner for ruling, together with affidavit of service and United States Post Office return receipts thereof. (Board's order of December 9, 1947, is Respondents' Exhibit 2-C, and Respondents' motion to revoke subpoenas is Respondents' Exhibit 2-B, in Volume XII hereof.)

(6) Stenographic transcript of testimony taken before Trial Examiner Leff on December 22, 1947, January 7, 8, 9, 12, 13, 14, 15, 16, 17, 19, 20, and 21, 1948, together with all exhibits introduced in evidence; also all rejected exhibits.

(7) Stenographic transcript of testimony taken before Trial Examiner Leff on March 30, 31, April 1, 2, 3, 6, 8, 15, 28, 29, 30, May 4, 13, 14, 17, 18, and 19, 1948, together with all exhibits introduced in evidence; also all rejected exhibits.

(8) Letter from American Newspaper Publishers Association, dated May 24, 1948, requesting extension of time for filing briefs with the Trial Examiner.

(9) Copy of Chief Trial Examiner's telegram, dated May 25, 1948, granting all parties extension of time to file briefs.

(10) Copy of General Counsel's suggested conclusions of law and proposed orders, together with affidavit of service thereof dated June 24, 1948, and United States Post Office return receipts.

(11) Copy of Trial Examiner Leff's Intermediate Report in Case No. 9-CB-5, dated August 6, 1948 (annexed to item 40 hereof).

(12) Copy of Trial Examiner Leff's Intermediate Report in Case No. 13-CB-6, dated August 6, 1948 (annexed to item 41 hereof).

(13) Order transferring cases to the Board, dated August 13, 1948.

(14) Affidavit of service of Intermediate Reports in Cases Nos. 9-CB-5 and 13-CB-6 and order transferring cases to the Board, together with United States Post Office return receipts thereof.

(15) Letter from Southern Newspaper Publishers Association (Intervenor before the Board in Case No. 9-CB-5), dated August 19, 1948, requesting extension of time to file brief.

(16) General Counsel's request for oral argument before the Board, dated August 19, 1948.

(17) Request of American Newspaper Publishers Association for oral argument before the Board, dated August 20, 1948.

(18) Request of Intervenor Southern Newspaper Publishers Association for oral argument before the Board, sworn to on August 25, 1948.

(19) Request of Inland Daily Press Association (Intervenor before the Board in Case No. 9-CB-5) for oral argument before the Board, sworn to on August 25, 1948.

(20) Letter from Intervenor Inland Daily Press Association, dated August 31, 1948, requesting extension of time for filing exceptions and brief.

(21) Copy of telegram, dated September 2, 1948, granting all parties extension of time for filing exceptions and briefs.

(22) Respondents' letter, dated September 2, 1948, requesting oral argument before the Board; also requesting that they be allowed two hours of oral argument.

(23) Request of Chicago Newspaper Publishers Association (Charging Party before the Board in Case No. 13-CB-6) for oral argument before the Board, sworn to on September 3, 1948.

(24) Respondents' letter, dated September 28, 1948, requesting extension of time for filing exceptions and briefs.

(25) Copies of General Counsel's exceptions to the Intermediate Report in Cases Nos. 9-CB-5 and 14-CB-6, respectively, received September 28, 1948.

(26) Copy of General Counsel's suggested conclusions of law and proposed orders, received September 28, 1948.

(27) Copy of telegram, dated September 29, 1948, granting all parties further extension of time for filing exceptions and briefs.

(28) Exceptions of Chicago Newspaper Publishers Association to the Intermediate Report in Case No. 13-CB-6, dated October 14, 1948.

(29) Exceptions of American Newspaper Publishers Association to the Intermediate Report in Cases Nos. 9-CB-5 and 13-CB-6, respectively, dated October 15, 1948.

(30) Exceptions of Intervenor Southern Newspaper Publishers Association to the Intermediate Report in Case No. 9-CB-5, including proposed revisions thereof, received October 15, 1948.

(31) Copy of brief and exceptions of Intervenor Inland Daily Press Association to the Intermediate Report, dated October 15, 1948.

(32) Copy of exceptions of Respondents ITU and agents to the Intermediate Report in Case No. 9-CB-5, dated October 15, 1948.

(33) Exceptions of Chicago Typographical Union No. 16 and International Typographical Union (Respondents in Case No. 13-CB-6) to the Intermediate Report.

(34) Copy of General Counsel's motion to schedule oral argument of cases along with Cases Nos. 5-CB-1 and 2-CB-14, together with affidavit of service thereof dated April 7, 1949, and United States Post Office return receipts.

(35) Order denying General Counsel's motion to schedule oral argument, issued by the Board on April 8, 1949,

together with affidavit of service and United States Post Office return receipts thereof.

(36) Copy of motion of American Newspaper Publishers Association to consolidate cases for purpose of decision, received April 22, 1949.

(37) Copy of General Counsel's letter, dated April 25, 1949, joining in motion of American Newspaper Publishers Association for Consolidation of cases.

(38) Notices of hearing for the purpose of oral argument before the Board, dated May 22, 1949; copy of Board's order dated May 2, 1949, denying motions to consolidate cases; also Board's letter, dated May 2, 1949, advising that the Board would not entertain requests for postponement of oral argument, together with affidavit of service and United States Post Office return receipts thereof.

(39) Lists of appearances at oral arguments held before the Board on May 24, 1949, in Cases Nos. 9-CB-5 and 13-CB-6, respectively.

(40) Copy of Decision and Order in Case No. 9-CB-5, issued by the National Labor Relations Board on October 28, 1949, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

(41) Copy of Decision and Order in Case No. 13-CB-6, issued by the National Labor Relations Board on October 28, 1949, with Intermediate Report annexed, together with affidavit of service thereof.

(42) Copy of Respondents' petition for rehearing (referred to as motion for reconsideration in items, 46, 47, and 48 below) received February 13, 1950.

(43) Opposition of the American Newspaper Publishers Association to Respondents' petition for rehearing, dated February 20, 1950.

(44) Opposition of the Intervenor Inland Daily Press Association to Respondents' motion for reconsideration, received February 20, 1950.

(45) Opposition of the Intervenor Southern Newspaper Publishers Association to Respondents' motion for reconsideration, received February 23, 1950.

(46) Opposition of Chicago Newspaper Publishing Association to Respondents' motion for reconsideration, received February 28, 1950.

(47) Copy of Board's order denying Respondents' petition for rehearing, issued March 17, 1950, together with copy of affidavit of service thereof.

IN TESTIMONY WHEREOF, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 25th day of January, 1951.

/s/ Frank M. Kleiler
Frank M. Kleiler
Executive Secretary
National Labor Relations Board

(Seal)

Docket No. 9-CB-5 Official Exhibit No. B-1-A

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

1. Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that The International Typographical Union and also Woodruff Randolph its President, Larry Taylor its First Vice-President, Elmer Brown its Second Vice-President, and Don Hurd its Secretary-Treasurer, which officers constitute the Executive Council of said Union at 2820 N. Meridian Street, Indianapolis (6), Indiana, have engaged in and are engaging in unfair labor practices within the meaning of Section 8(b) subsections 1(A)(B), (2) and (6) of said Act, in that: (Recite in detail in paragraph 2 the basis of the charge. Be specific as to names, addresses, plants, dates, places, and other relevant facts)

2. Said charges are attached hereto, marked Appendix A, and by this reference made a part hereof.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

3. Name of Employer—Newspapers throughout the United States, its territories and the District of Columbia, including members of the American Newspaper Publishers Association.

4. Location of plant involved.....
(St) (City) (State)

Employing .....
(Number of workers)

5. Nature of business—Printing, Publication and Distribution of newspapers.

6. (Paragraphs 6, 7, and 8 apply only if the charge is filed by a labor organization) The labor organization filing this charge, hereinafter called the union, has complied with Section 9(f)(A), 9(f)(B)(1), and 9(g) of said Act as amended, as evidenced by letter of compliance issued by the Department of Labor and bearing code number..... The financial data filed with the Secretary of Labor is for the fiscal year ending.....
A Certificate has been filed with the National Labor Relations Board in accordance with Section 9(f)(B)(2) stat-

ing the method employed by the union in furnishing to all its members copies of the financial data required to be filed with the Secretary of Labor.

7. Each of the officers of the union has executed a non-communist affidavit as required by Section 9(h) of the Act.

8. Upon information and belief, the national or international labor organization of which this organization is an affiliate or constituent unit has also complied with Section 9(f), (g), and (h) of the Act.

American Newspaper Publishers Association, 370 Lexington Avenue, New York 17, N. Y. Caledonia 5-200.

By Elisha Hanson
Elisha Hanson
General Counsel

Subscribed and sworn to before me this 17th day of November, 1947, at Cincinnati, Ohio, as true to the best of deponent's knowledge, information and belief.

Martin Sacks
Board Agent

APPENDIX A

During the period beginning on or about June 23, 1947, and continuing down to and including the date of the filing of these charges the International Typographical Union and its subordinate local unions, hereinafter referred to as the Unions, entered into and have carried out a deliberate plan and course of action constituting a conspiracy for the purpose of violating the provisions of the Labor Management Relations Act of 1947 and have violated said Act and are now violating it in respect of the relations of said unions with publishers of newspapers throughout the United States, its territories and the District of Columbia, including members of the American Newspaper Publishers Association.

In furtherance of said plan and course of action and conspiracy at all times since August 23, 1947, said International Typographical Union by the acts of its 89th Annual Convention, by the acts of the President and Executive Council of said International Typographical Union and by the acts of the officers, scale committees and/or agents of various subordinate local unions in carrying out the orders of the President and the Executive Council of the International Typographical Union, has

1. Attempted to and is continuously attempting to cause the employers herein to discriminate against their employees in violation of Section 8(a)(3) of the Act by attempting to impose upon employers the union's closed shop law which provides that all composing room work appertaining to the printing of a daily and/or Sunday newspaper and preparation therefor and also that all mailing room work incident to the distribution of a newspaper shall be performed by employees who are members of said unions.

2. Attempting to and is continuously attempting to compel employers to hire and retain in their employ only those foremen who are members of said unions.

3. Restrained and coerced and is restraining and coercing

(a) Employees of the employers herein in the exercise of the rights guaranteed in Section 7 of the Act by all of the acts and conduct hereinbefore set forth and also by causing its subordinate local unions to fail and refuse to bargain collectively in good faith with employ-

ers and by refusing itself to bargain collectively in good faith and by other acts and conduct,

(b) The employers in the selection of their representatives for the purpose of adjustment of grievances by seeking to compel said employers to hire and retain in their employ only those foremen who are members of said unions and by other acts and conduct provided for in and implemented by the laws of said International Typographical Union.

4. Caused or attempted to cause employers to pay money in the nature of an exaction for services not performed or not to be performed by members of said unions in connection with the publication of said employers' newspapers by, inter alia, demanding and receiving payment for services not rendered while its members were slowing down production or refusing to produce during working hours and by demanding and receiving payment for the reproduction of matter appearing in newspapers where such matter when reproduced was not even used in the publication of newspapers.

Wherefore, the American Newspaper Publishers Association in behalf of newspaper publishers who are threatened with immediate and irreparable damage requests the Board for immediate relief in accordance with the provisions of the Labor Management Relations Act, 1947.

Docket No. 9-CB-5 Official Exhibit No. B-1-C

UNITED STATES OF AMERICA
Before the National Labor Relations Board
Ninth Region

In the Matter of International Typographical Union, and its Agents Woodruff Randolph, Larry Taylor, Elmer Brown, and Don Hurd and American Newspaper Publishers Association	Case No. 9-CB-5

COMPLAINT

It having been charged by American Newspaper Publishers Association, herein called the Association, that International Typographical Union and its agents Woodruff Randolph, Larry Taylor, Elmer Brown, and Don Hurd, hereinafter called the respondents, have engaged in and are now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act as amended, Public Law 101—80th Congress, First Session, hereinafter called the Act, the General Counsel of the National Labor Relations Board on behalf of the Board, by the Regional Director for the Ninth Region, designated by the Board's Rules and Regulations, Series 5, Section 203.15, hereby issues this Complaint and alleges as follows:

I. The Association is and at all times material herein has been a membership corporation incorporated under the laws of the State of New York, having its prineipal offices in the City of New York, State of New York. The companies or businesses whose names are attached hereto as Appendix A, are, and at all times material herein have been, members of the Association. Said companies or businesses and in addition thereto all other companies or businesses referred to in the charge attached hereto, all of whom are hereafter called or referred to as the companies, have their principal places of business throughout the United States, its territories, and the District of Columbia, where each is engaged in the publication of a newspaper.

II. The Association in the course of carrying on its business utilizes numerous means of interstate communication and transportation, and its operations affect the supply and distribution of labor, materials, newspapers and other commodities throughout the United States, its territories, and District of Columbia. Of said companies a substantial number in the course and conduct of their business operations have continuously caused a substantial amount of equipment, materials and supplies used in the production and publication of their respective newspapers to be purchased, transported and delivered in interstate commerce from and through states of the United States other than the state, territory, or District of Columbia, in which each is located; utilize national and international news services or the services of correspondents located outside the state, territory, or District of Columbia in which each is located; from time to time run advertisements of companies engaged in interstate commerce distributed either nationally or in many states and publish news of matters occurring outside the state, territory or District of Columbia in which each is located; and also cause a substantial number of the newspapers published by them to be sold or distributed to points outside the state, territory or District of Columbia in which each is located.

The Association is engaged in commerce within the meaning of the Act; a substantial number of the aforesaid companies are engaged in commerce within the meaning of the Act.

III. Respondent International Typographical Union is a labor organization within the meaning of Section 2, sub-section 5 of the Act. Respondents Woodruff Randolph, Larry Taylor, Elmer Brown, and Don Hurd are respectively president, first vice-president, second vice-president, and secretary-treasurer of respondent International Typographical Union. As such each is an officer of said respondent union and a member of the executive council of said union.

IV. The member companies of the Association have prior to August 22, 1947, designated and have continued to designate since that date the Association as their representative for the purpose of bargaining with respondents on general matters of policy relating to labor relations.

V. Respondents and each of them have since August 22, 1947 attempted to cause employers, including a substantial number of said companies to discriminate against employees in violation of sub-section 8(a)(3) of the Act or to discriminate against employees with respect to whom membership in respondent has been denied or terminated on some ground other than their failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership by:

1. Imposing conditions of employment upon a substantial number of said companies which cause or attempt to cause employers to discriminate against employees as aforesaid.
2. Demanding or requesting clauses, phrases, or provisions in contracts or agreements which cause or attempt to cause employers to discriminate against employees as aforesaid.
3. Instructing, requiring, or directing subordinate unions of respondent International Typographical Union to impose conditions of employment which cause or attempt to cause employers to discriminate against employees as aforesaid.
4. Instructing, requiring, or directing subordinate unions of respondent International Typographical Union to demand or request the insertion of clauses, phrases, or provisions in contracts or agreements which cause or attempt to cause employers to discriminate against employees as aforesaid.
5. Recommending or requesting that subordinate local unions of respondent International Typographical Unions impose conditions of employment or demand or request clauses, phrases or provisions in contracts or agreements which cause or attempt to cause employers to discriminate against employees as aforesaid.
6. Causing subordinate local unions of respondent International Typographical Union to insist on or request clauses, phrases or provisions, or to impose conditions of employment which cause or attempt to cause employers to discriminate against employees as aforesaid.
7. Causing or attempting to cause employers to employ as their foremen only members of respondent

International Typographical Union or its subordinate unions, since such foremen are required by respondent International Typographical Union to hire or retain as employees only members of respondent International Typographical Union.

VI. Respondents and each of them since August 22, 1947 have caused or attempted to cause employers, including a substantial number of said companies, to pay or deliver money or other things of value in the nature of an exaction for services which are not performed, or not to be performed, by:

1. Insisting on, demanding, or requesting or causing subordinate local unions of respondent International Typographical Union to insist on, demand or request contract provisions or clauses providing for payment for reproducing advertising material or other materials which when so reproduced are not used or not to be used.

2. Imposing or causing to be imposed conditions of employment which provide for payment for reproducing advertising material or other materials which when so reproduced are not used or not to be used.

3. Causing employers to pay employees for reproduction of advertising material and other materials which when reproduced have not been used and are not to be used.

VII. Respondents and each of them since August 22, 1947 have restrained or coerced and are restraining or coercing employers, including a substantial number of said companies, in the selection of their representatives for the purpose of collective bargaining or the adjustment of grievances, by:

1. Insisting, demanding or requiring that the employers hire or employ only foremen who are members of respondent union.

2. Directing or causing subordinate local unions of respondent International Typographical Union to insist, demand or require that the employers hire or employ only foremen who are members of respondent union.

VIII. Respondents and each of them since August 22, 1947 have restrained or coerced, and are restraining or coercing employees in the exercise of the rights guaranteed in Section 7 of said Act, by:

1. Causing or attempting to cause emlpoyers, including a substantial number of said companies, to discriminate against employees as set forth in Paragraph V above.
2. Demanding clauses, phrases, or provisions in contracts or agreements which would restrain or coerce employees in the exercise of their rights under the aforesaid Section 7.
3. Causing subordinate local unions of respondent International Typographical Union to insist on or demand clauses, phrases or provisions in contracts or agreements which would restrain or coerce employees in the exercise of their rights under the aforesaid Section 7.
4. Imposing conditions of employment which restrain or coerce employees in the exercise of their rights under the aforesaid Section 7.
5. Causing subordinate local unions of respondent International Typographical Union to impose conditions of employment which restrain or coerce employees in the exercise of their rights under the aforesaid Section 7.
6. Failing or refusing to bargain collectively in good faith with a substantial number of the companies where respondent International Typographical Union was, on August 22, 1947, and has continued to be the exclusive representative of employees of the companies in accordance with the provisions of Section 9(a) of said Act.
7. Causing subordinate local unions of respondent International Typographical Union to fail or refuse to bargain collectively in good faith with a substantial number of the companies where each subordinate union was on August 22, 1947 and has continued to be the exclusive representative of employees of the companies in accordance with the provisions of Section 9(a) of said Act.
8. Causing subordinate local unions of respondent International Typographical Union to engage in "slow downs."

IX. Respondent, by the acts set forth in Paragraph V above and by each of said acts, did engage in and is now engaging in unfair labor practices within the meaning of Section 8(b)(2) of the Act.

X. Respondent, by the acts set forth in Paragraph VI above and by each of said acts, did engage in and is now engaging in unfair labor practices within the meaning of Section 8(b)(6) of the Act.

XI. Respondent, by the acts set forth in Paragraph VII above and by each of said acts, did engage in and is now engaging in unfair labor practices within the meaning of Section 8, sub-sections (b)(1)(A) of the Act.

XII. Respondent, by the acts set forth in Paragraphs V and VIII above and by each of said acts did engage in and is now engaging in unfair labor practices within the meaning of Section 8, sub-sections (b)(1)(A) of the Act.

XIII. The activities of the respondents, and each of them, as set forth in Paragraphs V, VI, VII, and VIII above, occurring in connection with the operations of a substantial number of said companies or of the Association as described in Paragraphs I and II above, have a close, intimate and substantial relationship to trade, traffic and commerce among the several states of the United States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

XIV. The aforesaid acts of the respondent as hereinabove set forth constitute unfair labor practices affecting commerce within the meaning of Section 8, sub-sections (b)(1)(A), (b)(1)(B), (b)(2), and (b)(6), and Section 2, sub-sections (6) and (7) of the Act.

WHEREFORE, the General Counsel of the National Labor Relations Board, on behalf of the Board, on the 21 day of November, 1947, issues this Complaint against International Typographical Union and its agents Woodruff Randolph, Larry Taylor, Elmer Brown, and Don Hurd, the respondents herein.

Jack G. Evans

Jack G. Evans, Regional Director
Ninth Region
National Labor Relations Board

Docket No. 9-CB-5 Official Exhibit B-1-F

UNITED STATES OF AMERICA
Before the National Labor Relations Board
Ninth Region

In the Matter of International Typographical Union, and its Agents, Woodruff Randolph, Larry Taylor, Elmer Brown, and Don Hurd and American Newspaper Publishers Association	Case No. 9-CB-5

ANSWER

Now comes the International Typographical Union, respondent herein, and, without waiving its Special Appearance heretofore filed herein, makes answer to the allegations of the Complaint herein as follows:

I. Admitted
II. Denied
III. Admitted
IV. Denied
V. Denied
VI. Denied
VII. Denied
VIII. Denied
IX. Denied
X. Denied
XI. Denied
XII. Denied
XIII. Denied
XIV. Denied

International Typographical Union
by its attorneys
Van Arkel and Kaiser

December 1, 1947

United States of America

BEFORE THE NATIONAL LABOR RELATIONS BOARD
Division of Trial Examiners
Washington, D. C.

In the Matter of International Typographical Union, and its Agents Woodruff Randolph, Larry Taylor, Elmer Brown, and Don Hurd and American Newspaper Publishers Association	Case No. 9-CB-5

Messrs. Allen Sinsheimer, Jr. and Carroll L. Martin, of Cincinnati, Ohio, for the General Counsel.

Messrs. Gerhard P. Van Arkel and Henry Kaiser (Van Arkel & Kaiser), of Washington, D. C., and Mr. Clarence R. Martin, of Indianapolis, Ind., for Respondents.

Messrs. Elisha Hanson, William K. Van Allen, and Arthur B. Hanson, and Miss Letitia Armistead, all of Washington, D. C., for American Newspaper Publishers Association.

Messrs. Thurman Arnold and Norman Diamond (Arnold, Fortas & Porter), of Washington, D. C., for Southern Newspaper Publishers Association.

Messrs. Gerard D. Reilly and Charles E. Rhetts, of Washington, D. C., for Inland Daily Press Association.

Mr. Andrew C. Hamilton (Kirkland, Fleming, Green, Martin and Ellis), of Chicago, Ill., for Chicago Newspaper Publishers Association.

INTERMEDIATE REPORT

Statement of the Case

Upon a charge dated November 17, 1947, filed on behalf of newspaper publishers by American Newspaper Publishers Association, herein called ANPA, the General Counsel of the National Labor Relations Board[1] by the Regional Director for the Ninth Region (Cincinnati, Ohio), issued his complaint dated November 21, 1947,

[1] The General Counsel and his representative at the hearing are referred to as the General Counsel, the National Labor Relations Board as the Board.

against International Typographical Union, herein called ITU, and its agents, Woodruff Randolph, Larry Taylor, Elmer Brown, and Don Hurd, herein called the individual Respondents, and collectively with the ITU, Respondents, alleging that Respondents had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8 (b)(1)(A), (b)(1)(B), (b)(2), and (b)(6), and Section 2(6) and (7) of the National Labor Relations Act as amended (June 23, 1947, Public Law 101 80th Cong., Chapter 120, 1st Sess.), herein called the Act.

With respect to the unfair labor practices, the complaint, as amended at the hearing, alleged in substance that, since August 22, 1947, Respondents:

1. Violated Section 8(b)(2) by attempting to cause employers to discriminate against employees in violation of Section 8(a)(3) of the Act. More specifically, it is alleged, Respondents directly and through subordinate ITU locals, in their dealings with a substantial number of employers (a) imposed conditions of employment, (b) demanded, requested, or insisted upon certain contract provisions, (c) caused and attempted to cause the employment of only ITU members as foremen, and d) failed or refused to enter into or agree to any contract not terminable upon 60 days notice—all with the design of accomplishing the aforesaid unlawful objectives.

2. Violated Sections 8(b)(1)(A), by (a) engaging in the conduct alleged to be violative of Section 8(b)(2); (b) directly and through subordinate local unions imposing conditions of employment and demanding contract provisions which restrain or coerce employees in the exercise of their rights under Section 7 of the Act; (c) failing and refusing and causing subordinate locals to fail and refuse to bargain collectively in good faith with employers, and (d) engaging or causing subordinate locals to engage in slow-downs in support and as part of other unfair labor practices.[2]

3. Violated 8 (b)(1)(B), by demanding, directly and through subordinate locals, that employers hire only foremen who are ITU members.

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[2] Slow-downs were also alleged to be violative of Section 8 (b) (1) (A) in that they constituted illegal occupancy of employers' premises, and as violative of Section 8 (b) (6) in that they resulted in payment for services not performed and not to be performed. Upon motion of the General Counsel made at the conclusion of the hearing, however, these allegations were ordered deleted from the complaint.

4. Violated 8 (b)(6), by demanding and causing subordinate locals to demand contract provisions, and by imposing and causing to be imposed conditions of employment, providing for payment for reproducing advertising material or other materials which when reproduced are not used and are not to be used.

Copies of the complaint, accompanied by notice of hearing thereon, were duly served upon Respondents.

Prior to the hearing, Respondents filed a special appearance and plea to the jurisdiction of the Board. The grounds asserted for dismissal of the complaint were (1) that the National Labor Relations Act as amended is unconstitutional in specified respects; (2) that the Board is without jurisdiction over the persons of Respondents or the subject matter of the controversy for the reason that the operations of certain of the companies referred to in the complaint are not such as to affect commerce, thus depriving the Board of jurisdiction of any of the companies and their employees; and (3) that the Board's Rules and Regulations, Series 5, are ultra vires and void, and that no valid hearing can be held thereunder. Respondents special appearance and motion to dismiss were overruled at the opening of the hearing.[3]

Without waiving the position expressed in the special appearance, Respondents filed an answer denying generally the material allegations of the complaint.

Pursuant to notice, a hearing was held at Indianapolis, Indiana; Chicago, Illinois; Detroit, Michigan; Buffalo, New York; Albany, New York; and Washington, D. C., on various dates from December 9, 1947, to May 18, 1948, before the undersigned. Arthur Leff, the Trial Examiner duly designated by the Chief Trial Examiner. Motions were granted, over the objection of Respondents, permitting Southern Newspaper Publishers Association and The Inland Daily Press Association to intervene as parties in this proceeding. All parties were represented by counsel, participated in the hearing, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.

[3] The merits of that portion of the motion to dismiss which related to the constitutionality of the Act were not considered. The motion was decided in conformity to the Board's policy enunciated in **Matter of Rite-Form Corset Company, Inc.**, 75 N. L. R. B. 174.

At the opening of the hearing, Respondents moved to dismiss specified paragraphs of the complaint for failure to state violations of the Act. The motion was granted as to Paragraph VIII, subsections 6 and 7 (pleading the alleged refusal to bargain as a violation of Section 8 (b) (1)(A)) and as to Paragraph VIII, subsection 8 (pleading "slows-downs," without more, as a violation of the same section of the Act.) In all other respects, the motion was denied. Upon appeal to the Board by the General Counsel, the ruling dismissing subsection 6 and 7 of Paragraph VIII,[4] was reversed and the allegations were ordered reinstated in the complaint. At the same time the Board denied Respondents' motion for leave to appeal from such portions of the ruling on the motion to dismiss as were adverse to them.[5] Before the taking of any testimony, motions by the General Counsel to amend the complaint in certain respects were granted, a motion by Respondents to have the complaint made more definite and certain was denied, and a motion by Respondents for a bill of particulars was granted in part. Toward the close of the hearing, Respondents moved to limit proof to events occurring prior to March 27, 1948, the date of issuance of a District Court of the United States temporary injunction decree, under Section 10 (j) of the Act, applicable to this proceeding. The motion was denied.

At the conclusion of the hearing, an unopposed motion of the General Counsel was granted to conform the pleadings to the proof with respect to minor variances not going to the substance of the complaint. Decision was reserved at that time upon Respondents' motion to dismiss the complaint for insufficiency of proof. That motion is disposed of in accordance with the findings of fact and conclusion of law made below. All parties were afforded opportunity to file briefs and/or proposed findings

[4] No appeal was taken by the General Counsel from the ruling relating to subsection 8 of Paragraph VIII. That subsection was subsequently reinstated in the complaint in an amended form.

[5] The Board, in granting the General Counsel's appeal and in denying Respondents' motion for leave to appeal, refrained from passing on the merits of the issues of law involved. The Board stated in its order, dated December 16, 1947, that it was "unable to conclude at [that] juncture that any of the paragraphs in issue [were] clearly insufficient as a matter of law," and that it desired "to pass upon the questions raised only at the time of its consideration of the record as a whole on the merits."

of fact and conclusions of law, and to argue the issues orally upon the record. Briefs were thereafter filed by all parties.

On January 14, 1948, during the course of the hearing, the General Counsel entered an order, pursuant to Section 203.33 of the Board's Rules and Regulations—Series 5, consolidating, for the purpose of hearing only, the above-entitled proceeding with Matter of Chicago Typographical Union and International Union et ano, Case No. 13-CB-6. A separate Intermediate Report, incorporating by reference pertinent findings in this report, will be issued in Case No. 13-CB-6.

Upon the entire record in the case, I make the following:

Findings of Fact

I. Commerce

American Newspaper Publishers Association, a New York membership corporation, has a membership of over 800 newspaper publishers, whose publications carry over 90 percent of the advertising published in daily and Sunday newspapers throughout the United States, and whose daily and Sunday circulation exceeds 90 percent of the total such circulation in the United States. Among the Association members are the publishers of the newspapers listed in Appendix A hereto attached. In the production and publication of their respective papers, a substantial number of newspaper publishers throughout the United States, including the publishers of the newspapers listed in Appendix A, use materials and supplies, which are transported in interstate commerce. During the year 1947 these materials included approximately 4,500,000 tons of newsprint paper, of which over 3,000,000 tons came from Canada, over 100,000 tons from Newfoundland, and about 100,000 from Europe; and ink, type metal and other supplies valued in millions of dollars. A substantial number of the newspapers, among them the newspapers listed in Appendix A, utilize national and international news services, including Associated Press, United Press, International News Service, and other agencies which supply feature materials of various kinds. The furnishing of these services requires the use of various channels of interstate commerce and communications. A substantial amount of the newspapers circulated in the United States are circulated through the channels of interstate commerce.

Appendix A contains the names of those newspapers whose relations with the ITU and its subordinate unions since August 22, 1947, were more particularly explored during the course of the hearing. The Appendix discloses in approximate figures the daily circulation of each paper so listed, the percentage of such circulation which crossed State lines, the dollar value of purchases of newsprint and other supplies from and through States of the United States other than the State in which each is located, and the ratio which its national and out-of-State advertisements bears to its total advertisements.

It is found that a substantial number of newspaper publishers throughout the United States, including specifically but not exclusively, the publishers of the newspapers named in Appendix A, are engaged in commerce within the meaning of the Act.

II. Respondents involved

International Typographical Union, affiliated with the American Federation of Labor, is a labor organization within the meaning of the Act. Woodruff Randolph, Larry Taylor, Elmer Brown, and Don Hurd are respectively president, first vice president, second vice president, and secretary-treasurer of the respondent union. As such each is an officer of the respondent union and a member of its executive council.

III. The unfair labor practices

A. Background

1. Prefatory statement

The allegations of unfair labor practices—except for those relating to reproduction—flow from the nation-wide "collective bargaining policy" adopted by the ITU shortly after the enactment of the Labor Management Relations Act of 1947. This case is novel in at least one respect. Only the ITU and its executive officers are named as Respondents. The subordinate locals are not joined, although it was largely through them, in their direct dealings with employers upon a local level, that the ITU policy was given objective expression.

The professed aim of this proceeding is to curb the alleged unfair labor practices by striking at their nerve

center—the ITU. So that the issues of this case may be clearly evaluated, it is important at the outset to examine the organizational structure of the ITU, to bring into proper focus the relationship of the International to its locals, and to consider the extent to which the parent is empowered to shape and control the practices and policies of its subordinates in their dealings with employers. As supplying a backdrop for the events later to be related, it is important also to consider certain employment and other practices in the industry as they existed prior to August 22, 1947.

2. The organization of the ITU and the extent of its control over subordinate local unions and their bargaining policies

The ITU, organized in 1852, under the name of National Typographical Union as an amalgamation of previously existing local typographical societies, some of which had existed since about 1815, now numbers among its membership some 87,000 journeymen contained in about 850 locals.[6] The ITU now asserts jurisdiction over composing room employees, who are organized into subordinate Typographical Unions, and mailing room employees, who are combined in separate Mailers locals.[7]

The governing laws of the ITU consist of its constitution, bylaws, and General Laws. The former two relate mainly to the internal organization of the ITU, the third, as will more fully be disclosed, to the contractual relationship between subordinate locals and employers.

Substantial organizational control, under the ITU constitution and bylaws, is centered in the International body. The constitution empowers the International to "exercise complete and unrestricted authority to define its jurisdiction, enact, enforce and amend as provided in its constitution and bylaws all laws for the government of the International Union, its subordinate unions and its officers and members throughout its entire jurisdiction." To subordinate unions is reserved the right to make only such

[6] The ITU was the parent organization from which, without objection from it, the pressmen organized their own labor organization in 1892, the bookbinders in 1896, the stereotypers in 1903, and the photoengravers in 1906.

[7] Mailing room employees arrange for the dispatch of papers from press to truck. Their work is generally far less skilled than that of composing room employees.

"necessary laws for local self-government which do not conflict with the laws of the International Union." The constitution provides that ITU "mandates must be obeyed at all times and under all circumstances. Subordinate unions are required, under their charters, not only to comply with ITU laws, but "to be guided and controlled by all acts and decisions of the International as they may from time to time be enacted." Neglect or refusal by a subordinate local to obey any law or legal mandate of the ITU or its Executive Council may result in the imposition of a fine or the suspension of the local's charter by the Executive Council.

To the Executive Council—composed of the ITU president, vice presidents and secretary-treasurer, positions occupied by the individual respondents—is committed "the general supervision of the business of the International Union and of subordinate unions." The bylaws vest in the Council "authority to interpret and enforce contracts and agreements, interpret and construe the laws of the International Union and subordinate unions," and "to enforce such interpretation and construction unless and until reversed on appeal" in accordance with prescribed ITU procedures. As amended at the August 1947 convention, the bylaws further provide that "any subordinate union, member, or members refusing to accept and observe a decision or action of the Executive Council pending appeal to a convention—shall be subject to summary expulsion by the Executive Council."[8]

Centralization extends also to bargaining negotiations conducted by locals. With respect to certain subjects, such as the negotiation of wage scales and other economic conditions considered of a local character, the locals enjoy substantial autonomy. But as to others, regarded as fundamental to the interests of the Union as a whole, tight restrictions are imposed upon subordinate unions by the ITU General Laws—laws which are defined in the constitution as relating to "conditions of employment and the relation of subordinate unions and individual members to the employer."

The General Laws are traceable in their origin to the original custom of the Union—prevailing generally before collective bargaining contracts were first negotiated

[8] The 1947 convention amendment substituted "expulsion" for "suspension," thus further tightening the control of the Council.

about 1886—of adopting scales of prices and operating rules of conduct, setting the conditions on which Union members agreed to sell their services. As developed in more recent years, the "laws" constitute a Union code of operating rules and minimum working conditions relating to the operation of ITU organized composing rooms wherever located. The "laws" covers a variety of subjects. Some relate to procedures and restrictions governing or affecting such matters as discharges and lay offs, the filling of temporary vacancies, apprenticeship training, priority (seniority), and grievance procedure. Others are concerned with minimum working conditions that locals must provide for either in their contracts or in their proposals for a contract. Still others, affecting subjects of more direct concern in this proceeding—such as closed-shop conditions, work jurisdiction, struck work, and reproduction—will more fully be considered below.

The requirements of the General Laws are considered by the ITU to represent the floor upon which the structure of collective bargaining is erected. Locals bargain for wages and economic conditions not covered by the laws, or only partially covered; and where minimum conditions are prescribed, they may bargain for more than the minimum. But they may not, without contravening the "laws," bargain away what the "laws" provide. General laws are adopted, and may be amended, at ITU conventions, taking effect at the beginning of the succeeding year. In practice such laws are adopted only after the subject matter covered has won general acceptance in the industry, largely as a result of collective bargaining by the larger locals. Their adoption into the General laws is designed to bring stragglers into line, to stabilize working conditions in the industry and to achieve industry-wide standardization considered desirable in view of the mobility of printers as a craft. It has long been traditional in the industry to consider the ITU General Laws as a part of every contract; indeed the obligation to observe pre-existing ITU laws was expressed in Nation-wide arbitration agreements between the ITU and the ANPA in force from 1901 to 1922. The ITU has steadfastly maintained the position that its laws were an internal union matter, not subject to arbitration, and it was over this issue largely that relations between the ITU and the ANPA were broken in 1944. Since that time the ITU

has declined to approve any local contract which did not expressly or in substance provide:

> That the General Laws of the International Typographical Union in effect [January 1 the preceding year], not in conflict with this contract, shall govern the relations between the parties on conditions not specifically enumerated herein.

To assure adherence to ITU laws, provision is made for International supervision of all local contracts. The General Laws require subordinate unions "to submit to the International President for review and approval, as complying with the requirements of International Union laws, all proposals for a new contract—before presentation to the employer." After a contract has been negotiated by the local scale committee, the negotiated contract again must be similarly submitted for review before it can be finally accepted and signed. The "laws," as most recently amended, state that "no local union shall sign a contract guaranteeing its members to work for any proprietor, firm or corporation, unless such contract is in accordance with International law and policy and approved as such by the International President."[9]

Notwithstanding the provisions requiring ITU approval, the record reflects that there have been numerous occasions in the past when subordinate locals have consummated and signed non-approved contracts.[10] In no instance has the non-complying local been subjected to any reprisal or disciplinary action by the ITU. The power to discipline exists, nevertheless, in the various provisions already referred to, authorizing the imposition of sanctions for non-conformity, by means of expulsion, suspension or fine. And as will be seen, the exercise of that power on at least one occasion after August 1947—at San Francisco—was actually threatened by the Executive Council. Moreover certain substantial disadvantages flow from a local's failure to secure ITU approval. The ITU will refuse to assist a subordinate union in the enforcement of a non-approved contract. In the event of a dis-

[9] The words emphasized were added at the 1947 convention at the time the "collective bargaining policy" here in question was adopted.

[10] In all instances but two—involving contracts at Akron, Ohio and San Francisco to be referred to infra—this occurred prior to the adoption of the "collective bargaining policy." Usually the contract defects which blocked approval were corrected in succeeding contracts.

pute thereunder, it will not aid the local by strike authorization or payment of strike benefits. Since the ITU controls the strike defense fund, making locals largely dependent upon the central body in the event of disputes, this is not a matter of small consequence.

As for contract negotiations themselves, these are conducted, at least initially, directly by the local body. International representatives may not intervene in local negotiations unless requested to. But they must be called in by the locals under certain circumstances. The ITU bylaws prescribe that in the event of disagreement with an employer, which, in the opinion of a local, may result in a strike, "such [local] union shall notify the [ITU] President, who shall in person or by proxy investigate the cause of the disagreement, and endeavor to adjust the differences." This "investigation," as will be seen, takes the form of direct participation by the ITU president or his representative in the negotiations. The ITU cannot force a local to accept a contract or a settlement not to its liking. But it is in a position to prevent a strike on the issue, since under the bylaws, absent certain special circumstances, no strike may be called or lockouts declared without the sanction of the ITU executive council.[11] And, by virtue of its disapproval power it may in effect veto a contract settlement that may be palatable to a local, unless the local chooses to risk such consequences as flow from non-approval.

3. Traditional hiring practices in ITU organized offices prior to August 22, 1947—closed shop conditions; the role of the foreman; priority and apprenticeship systems

Scattered through the General Laws are a number of clauses restricting to ITU members, work in various occupational categories. All, however, are epitomized by Article V, Section 10 of the "laws," which requires that:

> all persons performing the work of foremen or journeymen at any branch of the printing trade, in offices under the jurisdiction of the International Typographical Union, must be members of the local union of their craft and entitled to all privileges of membership.

[11] That is not to say that the Council can force a local into a strike situation. Even where the Council has authorized a strike, it still required a three-fourths vote of the local membership before the strike may be inaugurated.

Ever since the ITU's early beginnings, the closed shop has constituted the cornerstone of its organizational and operating structure. The requirement that the foreman be a Union member has been an integral part of its closed shop policy. In practice, and as provided in the General Laws, the foreman is in complete charge of composing room operations in union shops; he is "the only recognized authority" who may give orders directly to rank and file employees; he passes on the competency of employees; he alone may employ or discharge. Moreover, under the General Laws, he is the person to whom all grievances based upon claimed contract violations must in the first instance be submitted for adjustment. Like rank and file employees, foremen are amenable to ITU authority,[12] and like them, are subject to the oath and obligation, to which all members are required to subscribe upon admission to the Union, "to support the [ITU] laws, regulations and decisions" and "to use all honorable means within my power to procure employment for members of the International Typographical Union in preference to others."[13]

The priority and apprenticeship training system, historically recognized in ITU organized shops, have been integrated with the closed shop employment practices. Under traditional ITU practices, priority (seniority) rights are recognized in hiring as well as in lay-offs. Although the ITU foreman has general authority to hire, his choice to a considerable extent is circumscribed by certain priority rules for which provision is made in the General Laws and in local or chapel rules. In actual practice, the hiring system operates generally as follows: Each office has a group of regular situation holders who work steadily and another group who appear for extra or substitute work. At each chapel (the local union's office unit) there is maintained a slipboard (priority board) which is the property of the union and subject to its ex-

[12] It is, however, not uncommon for ITU approved contracts to contain a provision, such as in the last Chicago newspaper contract, that no foreman shall be subject to disciplinary action by the Union "for any act in the performance of his duties as foreman, when such action is authorized by this Agreement and Scale, or when there is a difference of opinion as to the interpretation of this agreement."

[13] Randolph, while testifying, asserted that in view of the present law, the obligation to prefer union men in hiring, could no longer be considered binding. At the same time, he admitted that no notice to that effect had been given by the ITU, stating, "That is the boss' business."

clusive control. A union member seeking work at that particular chapel, instead of making application to management, has his card registered at the foot of the slipboard, after clearing with the Union's chapel chairman. When a situation vacancy occurs, or an extra position is to be filled, the foreman selects the person with highest priority who is competent to fill the job. A regular situation holder is charged with individual responsibility for the performance of his own work assignment, and, in the event of temporary absence, he selects himself, without clearing with the foreman, a competent substitute from the slipboard to fill his place.

Under the ITU "laws," 6 years apprenticeship training is a prerequisite to qualification for journeyman status. In its organized offices, apprenticeship training has been traditionally supervised by the local union, although joint management labor apprenticeship committees are set up in some localities, a practice which the ITU encourages. The General Laws provide that a person entering the trade must first be approved by the local union and pass a technical and physical examination. At the end of 1 year, the probationary period, if found qualified for further training by the apprenticeship committee and the foreman, he is required by the General Laws to become an apprentice member of the local union and thereafter to pay the prescribed dues. During the succeeding 5 years he receives training in all branches of his craft and, in addition, must enroll in and complete the ITU course of Lessons in Printing, which includes a course in trade unionism. Apprenticeship training in an ITU organized office is not, however, the only road to ITU journeyman status. One who has learned the trade in an "unfair" office and possesses the necessary journeyman qualifications, may also be admitted to journeyman membership.

General testimony was adduced by Respondents that ITU traditions are such that individual ITU members will not on principle work with non-members. Respondents attribute to that tradition the historical fact that composing rooms customarily have been either all union or all non-union. That ITU members in ITU closed shop offices have in the past been unwilling to work with non-union men is, of course, clearly true, and for reasons that are obvious. As to whether this is similarly true in shops, not under closed shop contracts, the general testi-

mony must be qualified to some extent by other evidence showing that ITU members have in fact worked with non-union men in shops that were being organized, and that ITU members work alongside non-members in the Government Printing Office.

4. Duration of contracts prior to August 22, 1947

Prior to August 22, 1947, relations between subordinate local unions of the ITU and newspaper publishers were customarily fixed by written contracts containing closed shop provisions. Their normal term was for a fixed duration period of 1 year or more.

5. The ITU traditional policies concerning "struck work" and work jurisdiction.

The ITU closed shop policy involved, as the ITU saw it, the exercise of its fundamental "right" to refuse to work with non-union men. In addition, two other traditional ITU policies—likewise viewed by it as fundamental "rights"—were affected in varying degrees by the enactment of the Taft-Hartley Act. Their consideration is pertinent to a complete understanding of the ITU "collective bargaining policy."

One, was the ITU traditional policy against handling "struck work"—the "right" to refuse to work on non-union goods. The exercise of this right was, in the eyes of the ITU, fundamental to the maintenance of its craft working standards. It had as it theoretical base, the principle that non-union products produced under sub-standard conditions compete unfairly against the union product, tend, because they are cheaper, to reduce standards generally, and hence operate as a downward drag on the wages and working conditions of union members. Prior to the amended Act, it was customary to include in contracts a "struck work" provision, either expressly or by reference to the General Laws. The law dealing with this matter (Art. III, Section 5, General Laws) was adopted in 1906. It reads:

> Subordinate unions at all times have the right to define as struck work composition executed wholly or in part by non-members, and composition on other work coming from or destined for printing concerns which have been declared by the union to be unfair, after which union members may refuse to handle the work classified as struck work.

The other, is the traditional ITU policy of protecting

its composing room work jurisdiction—the "right" to safeguard the jobs within its asserted jurisdiction from encroachment by others. As stated in the General Laws, Article III, Section 12.

> It is the unalterable policy of the International Typographical Union that all composing room work on any machine or process appertaining to printing and the preparations therefor belongs to and is under the jurisdiction of the International Typographical Union. Subordinate unions are hereby directed to reclaim jurisdiction over and control of all composing room work or processes appertaining to printing and the preparations therefor now being performed by nonmembers.[14]

The ITU considers it essential to its economic interests that its craft be kept intact; that the employer be prevented from taking away portions of its composing room work and giving it to other employees, whether organized or not; that its members be afforded the opportunity to work on newly developed composing room processes; and that they be guarded against technological displacement in the composing room by persons from outside the craft who are willing to work at lower standards.

B. The ITU "collective bargaining policy" of 1947.

1. The policy begins to take shape; Form A

With the enactment of the Taft-Hartley Act in June 1947, the ITU came to the conclusion, according to Woodruff Randolph's testimony, that the impact of the new law upon established ITU policies and practices might prove disastrous to the Union and the economic interests of its members unless protective measures were devised. Randolph testified, "Three basic and fundamental policies and practices of the ITU [were] at stake: the right to work only with union men; the right to work only on a union product; and the right to work only on matters within the jurisdiction of the Union." About July 1, 1947, the ITU Executive Council began to issue for posting at Union chapels a series of post-card bulletins, called "T-H-L Points," as well as other instructional material indicating what course of conduct locals were to pursue

[14] Another, and more recent section of the General Laws supplements somewhat the above quoted section by making specific jurisdictional claim "over all duplicating machines, such as typewriters and varitypers, etc., the product of which is actually used in printing."

"to avoid the pitfalls" of the law. It was not contemplated that these would be kept confidential, and it was known that they would come to the notice of employer representatives almost simultaneously with their receipt by the locals, as in fact they did.

Agreements expiring before August 22, 1947, the effective date of the new law, the locals were advised, could appropriately be extended for a year, provided an extension agreement in the precise form prescribed by the ITU Council, styled Form A, was signed verbatim by both parties before that date. Form A was designed to be attached to the prior contract, retaining all of its provisions. Although designated as a 1-year extension agreement, it did not bind the parties irrevocably for that term. It contained a 60-day cancellation clause exerciseable at the option of either party, a general invalidation clause effective if any particular provision of the contract was determined unlawful, a provision permitting the employer to terminate the contract in the event of an unresolved dispute over work jurisdiction, and a clause nullifying the contract in the event of an action brought "by any person or agency whatsoever attacking the validity of the agreement or seeking to prevent its terms being carried out." The unit was defined as constituting "all composing room employees," a description that was to be subject to definition and limitation by the Union alone, but with the right reserved to the employer to terminate the contract in the event of any unresolved dispute, as above noted. The employer agreed not to appeal any jurisdictional issue to any agency, and to limit all legal recourse to a Joint Standing Committee whose maximum award was limited to $25. A final clause provided that no Union member could be required to cross a picket line established by any ITU subordinate union.

In the official communication accompanying "Form A," the locals were advised:

> Do not be stampeded into signing before August 22, 1947, just to get a closed shop contract. We will maintain our right to work only with union men under any circumstances.

In post-card bulletins issued about that time, the locals were advised to make it plain to employers that any proposals submitted were to be contingent upon acceptance prior to August 22 and were to be void thereafter. "After

August 22," they were cautioned, "do not verbally agree to or sign anything without communicating with the President of the ITU."

As for contracts expiring after August 22, 1947, the subordinate unions were instructed in Bulletin No. 81 (7/1/47) to serve notices, 60 days prior to the termination date, in the following form:

> This is to serve you with 60-day notice of termination of the contract between your company and Union No. a subordinate union of the International Typographical Union.
>
> To the extent required by Section 8 (b) (3) of the LRMA this is to offer to meet and confer for the purpose of 'negotiating' conditions of employment but reserving all rights provided by said LRMA Section 8 (d) that such obligation does not compel this union to agree to a proposal or require the making of a concession.

Other bulletins issued during this period foreshadowed the "collective bargaining policy" which was to be adopted at the August convention.

Thus in Bulletin No. 86 (7/17/47) the following was communicated:

> A rock-bottom foundation must be built upon which our relations with employers must rest. In order to do so, we must have a clear understanding of our fundamental rights which remain inviolate under T-H-E or any state law.
>
> "THIS IS IT—MEMORIZE IT!
>
> We cannot be compelled to make contracts with employers.
>
> We cannot be compelled to work against our will or under conditions unsatisfactory to us.
>
> We CAN collectively promulgate the specific conditions under which our members will work after expiration of existing agreements.
>
> We CAN collectively refuse to work for any employer refusing to meet union-promulgated conditions of employment.

In Bulletin No. 95 (8/7/47) issued shortly before the annual convention, the ITU Council explained the underlying objectives of that proposed policy, as follows:

WARNING

After August 21, 1947, no union can protect itself in the essentials of ITU laws if it signs a contract with employers.

The T-H-L will prevent you from securing a closed shop contract. The T-H-L will prevent you from excluding non-union men. The T-H-L will prevent your refusing to handle struck work. The T-H-L will interfere with your jurisdiction over work.

The shortcomings of even a union shop contract in meeting the desired objectives were expatiated on in Bulletin No. 87 (7/28/47), where it was stated, inter alia:

> If you book yourself into being designated bargaining agent under the law and THEN walk out when non-union men are brought into your shop, you will be charged with striking for an illegal purpose and you can expect injunctions to be slapped on you and damage suits for violation of contract. • • •

2. The policy is adopted.

On August 21, 1947, the ITU at its annual convention, by unanimous vote of the delegates democratically elected by the subordinate locals, adopted the "collective bargaining policy." This policy took the form of a resolution which passed as a revision of Section 1, Article III of the General Laws. The policy statement, in addition, to declaring a desire to continue harmonious relations with employers; expressing the belief that the Labor Management Relations Act of 1947 was "all considered," and in certain respects "unconstitutional and invalid—impractical and unworkable—inequitable and unjust"; and stating the Union's position concerning compliance with Section 9 (f), (g), and (h) of the Act—portions of which have been omitted—reads:

> It is our policy that we continue to maintain our long standing reputation for integrity in performing our contracts and carrying out our union commitments.
>
> It is our policy that we maintain our historic rights and prerogatives, to which we are entitled and which we have enjoyed for nearly a century.
>
> • • •
>
> While there should not be, and will not be, any attempt on the part of the international or subordi-

nate unions to violate any valid provisions of this law, or of any law, federal or state, yet there should be, and will be, earnest endeavors on the part of these unions to avoid any condition that will result in their being penalized by these laws and to avoid the sacrifice of rights and prerogatives which may be lost by the signing of contracts as heretofore.

The Labor Management Relations Act does not compel the signing of contracts, and refraining from doing so is not a violation or evasion of the law. It will be our policy to refrain from signing contracts in order that we avoid agreeing, or seeming to agree, or voluntarily accepting the conditions created by such a relationship under the Labor Management Relations Act of 1947.

Even the Taft-Hartley law provides that:

> Nothing in this Act shall be so construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act.

Upon the expiration of existing contracts, and until the laws above referred to are amended and free collective bargaining is again recognized, our members may accept employment only from employers who are willing to employ them under the Conditions of Employment which the several unions adopt, after approval by the Executive Council of the I.T.U.

Our unions will give sixty days' notice before an existing contract may be changed or terminated.

They will notify state and federal concilation agencies simultaneously thirty days after the original notice.

They will engage in collective bargaining to the extent required by law, bearing in mind that the legal obligation of a 'labor organization' under the LMRA to 'bargain collectively,' meet and confer in good faith with reference to wages, hours, etc., expressly provides as follows: 'But such obligation does not compel either party to agree to a proposal or require the making of a concession.'

A 'Conditions of Employment' form, which must be used by all unions and which is uniform except for local scales and practices, has been printed for

the convenience and use of all subordinate unions. The form sets out the conditions under which our members offer their services—so long as they are individually able and willing to work.

It is our policy that local unions * * * do not seek to execute so-called 'union shop' contracts. The process provided by the Labor Management Relations Act for that type of contract is too lengthy and cumbersome and there are features of such a 'union shop' that are unacceptable to our members. Neither may our unions enter into 'no strike' agreements or contracts of any kind without approval of the Executive Council.

* * *

We realize that this policy may bring some disappointment to our employers because it provides for unilateral action. It may be possible for those employers who do not approve the policy to prepare unilaterally a set of conditions of employment that would be satisfactory.

The Executive Council is hereby authorized to interpret, construe and enforce the above policy from August 22, 1947.

The convention also adopted two other amendments which in effect tightened the supervisory and enforcement powers of the Executive Council with respect to locally executed contracts. These have been adverted to more fully earlier in this report. One, provided that thereafter all contracts must be approved "as such" by the International president, and that they must conform to International "policy" as well as law. The other amended the bylaws by permitting the Executive Council summarily to "expel," rather than merely to "suspend," a local for failing to observe a decision or action of the Council pending appeal to a convention.

In his remarks to the convention urging adoption of the policy—remarks which were in part reprinted in the succeeding issue of Typographical Journal, official organ of the ITU, with the suggestion that members read them so as "more easily [to] find the answers to many questions they are asking"—Randolph stated, inter alia, as follows:

> If you do not sign a contract, if you do not agree to the proposal of the employer, the law protects you. If you have no agreement and no contract in effect you can strike.

On that point let me be a little more explicit. There is no law that specifies you must tell an employer why you are striking or why you are quitting your job. That is none of his business * * * Without any obligations to the employer by way of what is now a legal contract, you can strike for no reason at all.

In an earlier address to the convention, Randolph, explaining the proposed policy, had stated:

* * * They have set out to break open our closed shops. That means they have set out to destroy our unions.

* * * To my mind the employer doesn't have to put himself in the position where the proof of such discrimination is apparent. He doesn't have to hand out applications upon which such questions may be asked and answered. A union man seeking work in the union composing room knows how to get it. He doesn't go to the office. He doesn't go to the employer. He goes to the chairman to deposit his card and he goes to work in the union way.

Our method is so firmly entrenched that any employer in the printing industry that undertakes to put a non-union man in the composing room has by that very act, demonstrated that it is his desire to break the union. Any employer in the printing industry that undertakes to put you in a position where you will have to refuse to handle an unfair product is, by that very act, proving that he is your enemy.

* * * We only want to do what we have always done for nearly a hundred years, and I can assure them that we will do only what comes naturally. It is natural for a union man not to work with a non-union man; it comes natural to him to insist upon maintaining those jobs upon which his living depends; it is natural for him to refuse to work upon non-union products. * * *

* * * We have the right to choose not to make contracts, and if we don't make them we are free to do a lot of things that we are not free to do if we make them. * * *

3. Construction and interpretation of policy—August to October 1947; Conditions of Employment.

In accordance with the policy adopted, the ITU issued to each of its locals a printed Conditions of Employment form. This consisted of a unilateral statement setting forth the wages, hours, and conditions upon which Union members were prepared to work. The preamble to the "Conditions" recited that it was not a contract nor an offer susceptible of acceptance; that the "Conditions" were established by the Local subject to all [ITU] laws, regulations and decisions"; that "the Union promulgating these conditions of employment accepts no obligation as collective bargaining agent as defined by the Labor-Management Relations Act of 1947"; and that any act of union members in quitting their employment was "a matter of their individual rights and prerogatives." The preamble to the form concluded with this statement:

> Failure on the part of any employer or members of the union, to provide employment at the standards set forth in these conditions will be evidence such employer has locked out members of our union and with the consent of the International Typographical Union such members may be classified as locked out and other union members may be notified of such lock out.

Following the preamble, the "Conditions" form—which in time became known as the "long form" to distinguish it from the abbreviated form later issued—set out under the heading, "Schedules covering wages, hours, and other economic terms, with appropriate blanks provided for insertion by the Local after these were determined; a section on apprentices setting forth generally the provisions of the General Laws concerning this subject; and a miscellaneous section of other matters covered by the General Laws. Included among the miscellaneous clauses was one covering the reproduction rule, and a clause reading:

> The Union reserves to its members the right to seek employment elsewhere when any condition in the office they are working becomes unsatisfactory * * *.
>
> The union prescribes no obligation or duty for, or on behalf of, its members to work on any particular product not wholly produced in the shop in which they work. The union hereby reserved to each member the right to exercise any legal prerogative he may have to act individually in the quitting of his employment

or to work only when he considers himself able to do so.

The last two paragraphs of the Conditions declared:

> Members will work only under direction and supervision of a foreman of the composing room who is a member and who, as foreman, shall have full and complete control over the hiring and discharge of members doing any work in said composing room.[15]
>
> The composing room will be operated under the laws of the International Typographical Union and of * * * Union No. .....

The use of the "Conditions" form was not new in the annals of the ITU. In the early history of the ITU, before collective bargaining agreements were known in the industry, it was the customary bargaining for locals, usually after consultation with employees generally, to establish at their local union meetings, and thereafter promulgate, scales of hours, wages, and other conditions at which union members were prepared to sell their services. In more recent years it had been used as a device to avoid restrictions on closed shop agreements in states which had enacted so called "right to work" laws.

The "collective bargaining policy," as noted, conferred upon the Executive Council authority "to interpret, construe and enforce the above policy from August 22, 1947." This the Executive Council proceeded to do by a series of post-card bulletins and other releases. Thus, in Bulletin No. 96, issued August 25, the Locals were cautioned:

> Follow ITU policy no matter what happens! * * * If it becomes necessary to leave your job make no statement to employer, conciliator or anyone else as to the reason. You will strike or quit work because you do not want to work for a particular employer or do not want to work at all * * * and for no other reason. * * * Any proposal of any employer must be complete and referred to the [ITU] president * * * before any commitment of any kind is made by local committees or unions.

Concerning their duty to bargain, the locals were told, "our collective bargaining policy * * * can be successful only so long as local unions and employers fail to reach

[15] This was in the form submitted for use by Typographical Unions. The Mailers Union forms carried an appropriate change.

an agreement." They were further advised, "the only compulsion of the T-H-L is that you 'bargain in good faith,' but there is no legal definition thereof in the law * * * If by chance the NLRB or court should say we have not bargained in good faith, the Board or court would have to define it or leave it to our definition * * * We have never been accused of lack of imagination."

Detailed instructions were given to the locals as to the steps to be followed in collective bargaining. Sixty days before the expiration of a contract they were to send out a termination notice in the precise form adverted to above. They were to meet with employer representatives, but "discuss only what pertains to wages, hours, and working conditions from the standpoint of their desirability." If the employer asked for proposals they were to give him an "offer" in a form prescribed. [16] They were to "try to determine, through discussion a fair price for [their] labor, giving due consideration to employers' arguments and ability to meet conditions." They were to bear in mind what the obligation to bargain imposed by law, in the words of the statute, "does not compel either party to agree to a proposal or to require the making of a concession." They were to insist upon a complete proposal from the employer, and when such a proposal was made they were to refer it for consideration to the ITU with a full explanation, but were not to submit it to the local union until it had been approved by the ITU in accordance with its laws. They were to beware of verbal agreements. They were to comply with all statutory requirements concerning contract termination and pre-strike notices.

4. ITU changes strategy; Form P-6A

The "Conditions" form, like Form A before it, met with considerable resistance by employer groups and others who advised publishers not to assent to that method of operations. In late September, unfair labor practices charges were lodged against the ITU by the Graphic Arts

[16] The form, as prescribed in Bulletin No. 98 (8/25/47), reads:

OUR OFFER IN COLLECTIVE BARGAINING

1. We propose that there be no signed, verbal or any other kind of of contract.
2. We propose that the employer recognize that there is no obligation on the part of the union or its individual members to do other than may be specified in the "Conditions of Employment" set by the union.

League of Baltimore, and a complaint was issued by the NLRB General Counsel, alleging, inter alia, a refusal to bargain.[17]

Randolph in that case testified[18] that because of the opposition to his Unions' program engendered by "secretaries to employers associations" and others, and

> * * * considering the eminent authorities that decided we were illegal, we had to do something about it, especially desiring to get along with the employers and trying to keep from violating the Taft-Hartley Law. We were compelled to take a further look at the whole picture, and hired a couple more lawyers.

His testimony went on:

> Q. (Mr. Van Arkel): What was the result of that, Mr. Randolph?
>
> A. (By Randolph): Well, we have to advise our members en masse. We have to do our business in a fish bowl, and everything we tell our members about is immediately in the hands of the employers. So we had to issue a very clear statement entitled "Change in Strategy," and I believe that has been in evidence.

The change of strategy was reflected in the issuance to locals of Form P-6A. This was a form of agreement for an indefinite term, cancellable at the will of either party upon 60 days notice. The essence of P-6A is to be found in clauses (a) and (i) of the form. Because frequent references will be made to these clauses in subsequent sections of this report, they are set out in full for the convenience of the reader as Appendix B of this report.

The "Change of Strategy" statement, to which Randolph referred, was in the form of a circular, signed by the individual respondents, issued on October 7, 1947. Its announced purpose was to explain the "change in strategy because of attack by N.L.R.B. General Counsel against our collective bargaining policy." The circular quotes those paragraphs of the "Policy" that disclaim any intent to violate the law and that confer authority upon the Executive Counsel to "to interpret, construe

[17] Case No. 5-CB-1.

[18] His testimony in that case as well as his testimony before Judge Swygert in **Evans v. International Typographical Union**, was stipulated as part of the record of this proceeding.

and enforce the above policy"; expresses resentment against the attacks of the General Counsel and employer groups, and then goes on to enunciate the changed strategy as follows:

> We therefore can easily comply with even Denham's idea of 'good faith' by presenting a form of contract we will offer to sign if the employer will sign it.
>
> In the new form of contract (P-6A) we protect ourselves as well as we can by the paragraphs at the beginning, set in 10 pt. boldface type. The first paragraph, and the paragraphs that follow, lettered (a) to (i) both inclusive are the ONLY protection you can write into a contract on matters of utmost importance to us.
>
> Contract Proposal Only for 60-Day Duration
>
> The right to terminate on 60-day notice is absolutely essential because: It puts the employer in a position where he is likely not to have union employees working for him if he hires non-union men; if he brings in non union matter for you to work on; or if he tries to take away your jurisdiction.
>
> The reason we adopted a 'no contract' policy was to protect ourselves against the above acts which the employer could perform to our destruction.
>
> Now—with the 60-day notice requirement of the T-H-L, a local union can terminate form P-6A on 60 days' notice and begin 'bargaining in good faith,' again, even 'Denham style,' and be free at the end of the 60 days.
>
> Our Union's Life At Stake
>
> Every member MUST keep in mind the basic reason for our course of action.
>
> 1. We want to preserve the right of our members individually or, as far as we can collectively, to refuse to work with competing non-union men; the right to refuse to work on a competing non-union product; and the right to protect our jurisdiction over composing room work.
> 2. During the life of a contract you cannot successfully do so. The T-H-L will stop you in several ways.
> 3. The employer is in position during the life of a con-

tract to act either way as to those important matters.

4. The 60-day termination of the form P-6A limits the time during which you are in danger on those three above stated points.
5. The other paragraphs in form P-6A are carefully drawn to take care of the other matters vital to us. You can 'bargain in good faith' (even 'Denham style') but are not required to agree to a proposal or grant a concession. We like our 60-day limitatnon. We like paragraphs (a) to (i) inclusive. We want them as part of any contract we sign and Executive Council has approved them for offering to the employers. Do not change them simply because the employer screams about them. We have plenty to worry about ourselves.

It may be after the employer 'bargains in good faith' with us he will take another look at our 'Conditions of Employment' idea which was successful and acceptable enough until the T-M-L and Denham.

In connection with Form P-6A, Respondent Randolph, under date of October 6, 1947, also circulated a confidential communication, limited to the officers and scale committees of the subordinate unions, reading as follows:

> The contract form (P-6(a) prepared for submission when employers insist on a contract contains ample reason for rejection by employers in the first paragraph which provides for 60 days' termination. DO NOT CHANGE THAT LIMIT.
>
> The other sections on the first page (a) to (i) inclusive are absolutely necessary. DO NOT CHANGE THAT IN ANY WAY.
>
> This contract offer makes our 'Conditions of Employment' form much more desirable by employers.

Together with Form P-6A, the Executive Council circulated a "short form" Conditions of Employment form. This contained substantially the same preamble as the "long form," but its body provided for a bare statement of the basic wages and hours upon which members would be willing to work, no reference at all being made to working conditions generally. At the same time, there was also circulated to the locals a new set of instructions concerning their bargaining procedure. This is briefly summarized in the circular itself as follows:

(a) The long form of "Conditions of Employment" is still best for the union and for the employers
(b) If a contract is demanded by the employer submit contract form P-6A
(c) If too much delay is involved by bargaining in good faith fill in the short form of "Conditions of Employment" and send it to the President of the ITU with full explanation of local conditions
(d) No work stoppage may be called until all ITU laws governing strikes and lockouts have been followed
(e) The reason the short form has been prepared for use is so that any strike or lockout will be a purely economic affair uncomplicated by "Denham stuff"

Randolph, while testifying at Baltimore, explained that the 60-day termination clause was decided upon because the law provided for that minimum interim before a contract would be terminated; that if the law had permitted a shorter period, he would have used it.

> We conceive [Randolph testified] that if the contract was for a longer period the dangers to the union would multiply. By limiting the contract to sixty days, we have an opportunity to continue the usual relations and to await the moves of any employers who may desire to hire non-union help, put non-union work in the composing room, or interfere with our jurisdiction. It is our belief that if he does that we need to have the opportunity to cancel that contract at the earliest possible date.

After the issuance of the P-6A form and accompanying circulars explaining the "change in strategy," no further general instructions of significance, interpreting or altering the ITU "collective bargaining policy" were issued by the Executive Council until April 1948, when, following the promulgation of the so-called New York job-printers' formula on March 19, 1948, and the Section 10 (j) injunction decree issued by the United States District Court at Indianapolis, "Contract provisions which may be proposed in collective bargaining during pendency of Federal Court decree." That document as well as the New York formula will be adverted to below in the discussion of the New York negotiations.

C. The "line" of the ANPA bulletins

The ITU bulletins were paralleled by a series of bulle-

tins, contemporaneously circulated by the ANPA Special Standing Committee to its members, informing them of the ITU bargaining program and recommending how that program should be countered. In its bulletins, the ANPA condemned and recommended the rejection, successively, of Form A, Conditions of Employment, and Form P-6A. The publishers were specifically warned against including in any contract certain ITU proposed clauses, among them the 60-day cancellation, struck work, "all or nothing invalidation," jurisdiction and damage limitation clauses. They were advised particularly, and on a number of occasions, not to discuss wages until all other contract terms were settled, as illustrated by the following quotation from one of the bulletins:

> If the local union proposes a wage increase and "no contract" pending developments elsewhere, the employers' answer should be an emphatic "No." Nor should employers propose wage increases in the absence of a positive affirmation from the local union that it is willing to negotiate and sign a contract which complies in every particular with the IMRA. Even then the basic rule that wages and fringe costs are not open to discussion until agreement is reached on every other section of the contract should be forcefully invoked.

Randolph characterized the ANPA bulletins as laying down the "ANPA party line." But there is this important difference between the ANPA bulletins and those of the ITU: The ITU bulletins carried with them the force of direction inherent in the Executive Council's power to approve or disapprove local contracts and to invoke sanctions enforcing compliance with ITU laws and policies. Those of the ANPA carried no similar force; for the ANPA, unlike the ITU, is powerless to control its members' bargaining activities, and may do no more than advise and recommend. Yet, the ANPA bulletins are not without value in appraising the local bargaining negotiations to be discussed below.

With this general review of what occurred on a national scale, we turn now to consider how the ITU "collective bargaining policy" was actually applied, and with what variations, on local bargaining levels.

D. Application of ITU "collective bargaining policy" at local bargaining levels

1. Introduction

To illustrate the manner in which the ITU "collective bargaining policy" was applied on local levels, evidence was introduced at the hearing concerning negotiations between ITU locals and newspaper publishers at Chicago, Illinois; Hammond, Indiana; South Bend, Indiana; Sioux City, Iowa; Detroit, Michigan; Buffalo, N. Y.; Albany, N. Y.; and New York City. In addition, there was stipulated as part of this record, all evidence in the Federal Court injunction proceeding concerning similar negotiations at New Bedford, Mass.; Columbus, Georgia; Jamestown, N. Y., and Rockville Center, N. Y.;—in the last two mentioned cities this was done at the request of Respondents. Further, certain limited aspects of negotiations at other cities, such as at San Fancisco, as well as a general recapitulation of the outcome of bargaining negotiations in the industry nationally, were covered by other evidence, to be referred to in the miscellaneous section below. The negotiations at Chicago will be covered at some length, for several reasons. These were the first important negotiations conducted under the ITU "Policy" their span covers the Form A, Conditions of Employment, and Form P-6A phases of the ITU policy; they involve the direct participation at the later stages of ITU President Randolph; and they supply the most appropriate frame of reference for negotiations in other localities. Moreover, the Chicago negotiations form the subject of a separate complaint in the companion Case No. 13-CB-6, and the findings of fact made herein will be incorporated by reference in the separate Intermediate Report to be issued in that case. The negotiations in the other localities, except for New York City—where they extended into the post-injunction period—will be given more abbreviated treatment.

2. Chicago, Illinois

On July 21, 1947, exactly 3 months before its then current contract with the Chicago Newspaper Publishers

Association[19] was to expire. Chicago Typographical Union No. 16, served notice, as required by the contract, requesting that negotiations be opened for the succeeding term. Thereafter, and up to the time of the strike which began on November 24, 1947, about 20 meetings were held. John Pilch, President, and Joe Rhoden, Chairman of the Scale Committee, headed the union delegation. During most of the conferences, John O'Keefe, the Association's secretary, acted as principal spokesman for the publishers group. For purpose of convenience, the meetings are grouped as indicated below.

July 30 to August 21.[20] Candidly admitting that the Local was acting under ITU instructions and in the light of new conditions brought about by the impact of the Taft-Hartley Law upon former union practices, Pilch opened the negotiations by stating that the local was not submitting a full formal proposal as had been its pratice in the past. Both he and Rhoden asserted that the Local was interested in protecting its fundamental rights and in safeguarding the Union's treasury from depletion by law suits. Therefore, they did not desire to rush into a contract before August 22 just to get a closed shop agreement. If necessary, they said, the Union was prepared to go back to its original practice of working under conditions of employment. The publishers were advised, just as they were also advised on a number of subsequent occasions, that the Union did not intend to violate the new law, but that the Union did intend to ignore it by working outside its inhibitions.

After being assured by O'Keefe that the publishers had no desire to destroy the Union, the local offered Form A as a basis for a contract, making it clear, however, that the offer would be void if not accepted by August 22. In the ensuing discussions, the Local representatives explained that the several provisions of Form A had been written in for the purpose of "keeping out of the clutches

[19] The Association represents Chicago Daily News Inc., Illinois Publishing and Printing Company (publisher of the Herald-American), The Journal of Commerce Publishing Company, Sun and Times Co., and Tribune Company.

[20] Although Respondents' conduct prior to August 22, 1947, the effective date of the amended Act, may not be considered as constituting unfair labor practices, it is nevertheless relevant for the purpose of evaluating the Respondents' dealings with the publishers after that date (See e. g., **N. L. R. B. v. Pennsylvania Greyhound Lines Inc., et al.**, 303 U. S. 261, 268-270.

of the law," and to provide assurance that the publishers would not utilize certain provisions of the Taft-Hartley Law to damage or destroy the Union. They stated that they were obliged to insist upon the substance of Form A, but that the publishers might, if they wished, draft language of their own provided it afforded the Union the same degree of protection. There was some, but not much, discussion of particular clauses of Form A. Thus, the publishers questioned the jurisdictional clause, but after being assured by the Union that there was no intent to extend its already recognized juridiction over composing room employees, they did not pursue the matter further. O'Keefe also claimed that the "struck-work" clause was illegal under the anti-trust laws, a conclusion with which the local representatives disagreed. It was suggested to O'Keefe that he might want to add a proviso to that clause, but O'Keefe merely replied that, according to his information, no "struck-work" clause was legal. Principally, the publishers objected to the 60-day cancellation clause, which they claimed removed the element of stability from the contractual relationship. The Local, however, insisted on this clause, stating that while it had no intention of terminating the contract for wages, unless there was extreme inflation, it, nevertheless, desired to remain in a position to protect itself without incurring liability if certain basic union principles were violated.

The upshot of the discussions was the first rejection by the publishers of Form A. The publishers, in turn, proposed a 1-year extension of the former Contract without change, except for the insertion of a new section providing, "that no terms or provisions of this contract shall be so interpreted or applied as to violate any local or Federal Law," coupled with an understanding that wage rates be adjusted through future negotiations. Pilch agreed to submit this proposal to the ITU, expressing doubt, however, that it would be found acceptable by the ITU, a doubt which, as it turned out, proved fully justified.

At the August 21 meeting, the Local served upon the publishers a 60-day termination notice, in the precise form prescribed by the ITU, containing an offer to "negotiate" conditions of employment. Stating that he

wanted to determine if the Local could prescribe conditions satisfactory to the publishers, Pilch asked that the publishers submit a proposal containing wages and other economic terms. Pilch explained that the Local was prepared to discuss such economic terms with publishers, but that he did not intend that any understanding reached would take the form of an agreement, written or verbal. As to non-economic conditions, he said, the laws of the ITU would determine what went into the conditions. As an indication of its economic demands, the Local presented to the publishers at this meeting, "for information only," a contract proposal it had prepared before the enactment of the Taft-Hartley Law had change the ITU course of bargaining procedure.

August 22 to October 20: Six meetings were held during this period, of which four were before a conciliator. The Local took the position that, under ITU policy, as adopted at the last convention, it could not, and would not, agree to a contract at that time. It proposed instead that the parties operate under Conditions of Employment posted by the Local, or, if the publishers preferred, by the publishers. It expressed a willingness to negotiate on wages, hours, and other economic conditions, and urged the publishers to enter into such negotiations and to submit proposals thereon. At one "off the record" meeting, it suggested the possibility of reaching some other "understanding", which would make any agreed upon wage scale effective for a year and at the same time protect the Union's "fundamental rights," such as its "right" not to work with non-union men. Rhoden for the Local suggested a possible means by which the publishers might evade hiring non-union men, and indicated that in the event a publisher was compelled by unavoidable circumstances to hire a non-union man, the Local would take that into consideration and try to effect a satisfactory solution of the problem at that time. Throughout these discussions, the Local made it clear, however, that any understanding reached would not have the force of an agreement, written or verbal.

The publishers, on the other hand, declined to consent to any arrangement which would place them in a position of evading the law. Despite the Local's persistent requests, they steadfastly refused to make any wage offer

or otherwise discuss economic terms unless and until the Union first committed itself to a lawful contract for a 1-year term. With the issues thus joined, the parties remained deadlocked throughout this period.

On October 21, the term of the old contract expired.

October 21 to November 8: At a previous meeting on October 17, Rhoden had mentioned at one point that perhaps the Local would now be ready to negotiate for a contract, but Pilch had cautioned him, "No, not yet." The contract proposal Rhoden undoubtedly had in mind was offered on October 21. It was Form P-6A. It was presented by the Local as a "good faith" proposal on which to base negotiations leading to a complete contract. But the Local made clear that before it would sign a contract, it would require the substance of P-6A clauses (a) through (i). The language of those clauses might be changed, the publishers were informed, but only if the change did not deprive the Union of the basic protection these clauses were designed to supply. As for the 60-day cancellation clause, this the Local indicated was an absolute "must." A contract might be signed for a long term period, but it must contain a 60-day cancellation clause.

At the next meeting, on October 23 the publishers rejected Form P-6A as a basis for negotiations, particularly upon the ground that the 60-day termination clause offered no stability. There was little discussion at this or any other meeting concerning the individual clauses of Form P-6A. In general, the form was treated as an entire package. It was not the legality of the form, but the 60-day clause that was the central topic of discussion. At this meeting also, the publishers rejected an earlier request of the Local that the publishers' proposal for a 1-year extension of the lawful provisions of the last contract be clarified by defining the illegal terms. They stated that it would be futile, in view of ITU publicized bargaining policy, to comply with the Union's request until it had first received the Union's assurance that a contract would result. For the same reason the publishers again declined to make a wage offer. They said they had not further offer and saw no use in further discussions except with Randolph.

On November 8, Randolph wired the Association asking for a meeting on November 10 in order that he might

carry out his duties provided for in the ITU bylaws to "investigate the cause of the disagreement and endeavor to adjust the difficulty."

November 10 through November 14: Six negotiating conferences were held during this period, attended by the full ITU Executive Council and top officials of the Association members as well as by the prior negotiators. The ITU Executive Council was there, Randolph said, not as bargaining agent for the ITU or the Local, but at his request as ITU president to endeavor to adjust the existing differences.

Randolph in the course of his preliminary comments, as well as on various occasions thereafter, emphasized that it was the intent of the ITU to retain its historical practices. ITU men, he said, would not work with non-union men, or on non-union goods, or where their jurisdiction was interfered with. He was not, he added, asking that the publishers agree not to hire non-union men or otherwise to violate the law. He was instead, leaving it to the publishers to use their own ingenuity, and he would gamble that they would find a way out where their money was involved. The ITU president stressed that the ITU policy had these objectives: (1) to preserve the right of Union members not to work with non-union men; (2) to preserve their right not to work on non-union goods; and (3) to preserve the ITU work jurisdiction. These rights, he stated, the Union now had, always had, and had no intention of giving up. There was also a fourth objective—no contract—but that also had already been achieved with the expiration of the Chicago newspaper contract. There was left, he added, a fifth and final objective, not yet achieved —more money—, and that was an issue on which the Union could still strike.

Randolph told the publishers that the employees would work under Conditions of Employment. This he considered most desirable from any point of view. If however, the employers wanted a contract, they could have one. But it must be one which would protect the Union's interest, such as P-6A. The Union, he said, would not agree to any contract not containing a 60-day termination privilege. Such a provision, he stressed, was essential to the Union in order that it might have the opportunity to pull out without incurring financial liability if there was

any infringement of its fundamental rights. He was willing, he said at one point, to take a chance against the invasion of such rights for 60 days, but no more—"if we strike then, we can make our price higher."

O'Keefe assured Randolph that the publishers had no desire to destroy the Union, that they did not intend to look for non-union men, and that they did intend to continue their former practice of hiring only union foremen. The vice in Randolph's formula, said O'Keefe, was that it ruined stability and placed responsibility for violating the law entirely on the shoulders of the publishers. Replying that the Union was merely suggesting that the employees continue as they had before, Randolph added that the ITU would assume responsibility for seeing to it that stability was maintained under Conditions of Employment; and that it would not authorize any strike unless, after full exploration of the matter, it concluded that such action was essential for the protection of the Union. The publishers advised Randolph that they could accept neither the Conditions nor P-6A.

On November 11, the publishers submitted the so-called Garrison proposal, drafted by Lloyd Garrison who was representing the Times and Sun. In essence this provided for (1) a renewal of the existing agreement for 1 year; (2) the inclusion of a provision that only members of the Union would be employed as foremen and that preference in other situations would be given to former composing room employees of Association members; (3) the adjustment of wage rates, applicable retroactively, to be agreed upon later, and (4) the insertion of a new clause that no provision of the contract "shall be so interpreted or applied as to violate any local or Federal law," or in lieu thereof, the deletion from the contract of all provisions relating to the closed shop and struck work and the substitution therefor of another paragraph to read: "That the General Laws of the [ITU] in effect January, 1947, not in conflict with law or this contract, shall govern relations between the parties on conditions not specifically enumerated herein."

The Garrison proposal was not accepted. Randolph pointed out that the foremen provision should not be expressly incorporated in any contract, since a rejected non-union applicant might rely on this to support a claim of

discrimination. He objected particularly to the provision for a fixed duration term of 1 year, stating that it deprived the Union of the protection it desired. He complained that the Union was being asked to give up four objectives to secure one. In addition, he contended, it was not a full proposal since it did not include wages.

Thereafter, Randolph rejected a further proposal of the publishers that the issue as to whether there should be a stabilized contract for a 1-year term be submitted to the Chicago Federation of Labor for arbitration. Randolph stated that after having given the matter much thought he believed that Conditions of Employment or P-6A provided the only answer to the Union's needs— that perhaps the publishers could come up with something else, but he doubted it.

On November 13, the publishers did come up with another, and, as events proved, a final proposal—called the Woodard proposal.[21] Its submission was prefaced by a discussion of the mailers' situation. Garrison and Woodward stated that they had found a solution which would give the employees stability and the Union protection, but that the publishers were apprehensive about the mailers who were represented by another subordinate ITU local. The publishers were hopeful, they said, that no closed shop problem would arise affecting the printers, but they were concerned about the mailers who were less skilled, in short supply, and, moreover, affected by a jurisdictional dispute at one of the offices. Garrison asked for Randolph's assurance, which Randolph declined to give, that if a formula was agreed upon affecting the Typographical Union it would not be binding on the mailers' situation. The Woodard proposal when then presented with the understanding that it was conditional upon a solution of the mailers' problem read as follows:

> The contract effective October 21, 1947, is hereby extended . . . to October 2, 1948, except as it is in conflict with law, and except as modified below.
>
> If a situation should arise whose legal consequences under the Taft-Hartley Act might in the view of either party call into question the desirability of continuing the contract, the parties shall immediately meet and discuss the situation, and if after 10 days

[21] After C. E. Woodard, production manager of the Knight newspapers.

they have failed to agree upon a solution, either party may on 60 days written notice to the other cancel the agreement.

(Here insert changed wage rates and any other modifications.)

Randolph never rejected the Woodard proposal; neither did he agree to it. He took the position that it was not a complete proposal in a form that could be submitted to the Local membership with a recommendation, because it made no reference to wages and other economic conditions. He insisted that the negotiators turn to a discussion of those topics. The publishers pressed for a committment from Randolph as to whether or not the form was acceptable, but all Randolph would say was, "In the past your proposals were a rag, a bone and hank of hair, and I could say, 'No.' This one has a little meat on it." The publishers flatly refused to discuss money until Randolph had first committed himself to a contract framework. They expressed the fear that if that were done, the Union would post the wages in Conditions of Employment and forget about the framework. Randolph's rejoinder was that the men could live without framework, but not without money; that the Union had as much right to discuss money as the publishers had to discuss framework. Randolph remained adament on that point, and the publishers were equally tenacious in maintaining their position. The net result was that by mutual agreement the negotiations were declared deadlocked.

November 15 to November 24: No further conferences were held. On November 23, the Local advised the Publishers Association that its members had that day adopted a wage scale to be placed in effect pending further negotiations, and that unless the new scale were put in effect by the following evening the services of its members would be withdrawn. The Association replied that its members would not accept a "mandated wage scale," and that, although it remained willing to negotiate a new contract, its members in the meantime would continue operating under the terms of the expired contract. On November 24, 1947, the members of Local 16 went out on strike. The strike, authorized by the ITU, was still current at the time of the hearing.

Slowdowns: As noted, the contract expired on October

21. On October 24, Local 16 in a bulletin to its members placed full responsibility upon the publishers for the failure of negotiations, and reported, inter alia, that publishers were training non-union people in the operation of various devices to perform the work of members. The bulletin stated in part: "Our members under the power invested in the laws of the local and International union may individually refuse to cooperate in any manner with these reprehensible efforts of the publishers." At about that time there became apparent at the offices of a number of Association members, a falling off in composing room production.[22] This was coupled in at least two offices by a quite general failure on the part of composing room employees to identify their work in accordance with their past custom. Moreover, in at least one office—the Tribune—the employees displayed an unusual reluctance to perform overtime work,[23] thereby at times impeding the production of the newspaper. Pilch testified without denial, and it is found, that Local 16 never instructed its members to engage in slow-downs. His further testimony, however, that the Local never took any action which might encourage employees to engage in slow-downs, is found to be at least partially rebuted by the notice referred to above.

Complaint of the existence of a "concerted slowdown" was first made on October 27, when after several days of reduced output, the Association wired Pilch, insisting upon prompt and effective restoration of normal production. A copy of the same telegram was dispatched to Randolph on October 28. That day Pilch visited the various composing rooms, arranged for chapel meetings, and, after discussing the Association's telegram, told the composing room employees, according to his testimony, to conduct themselves in "traditional ITU manner."[24] It was Pilch's testimony that he found no evidence of any deliberate slow-down, but merely impatience over the failure to secure from the publishers a wage increase offer and con-

[22] This was most pronounced at the offices of the Tribune and Sun-Times: relatively slight at the Herald-American and Daily News; and not apparent at all at the Journal of Commerce.

[23] Although employees could not be required to work overtime without their consent, there had been no difficulty in the past in arranging for overtime work.

[24] By that he meant, Pilch testified, a day's work for a day's pay.

cern as to what would happen. Pilch attributed the slackening off in work to these "disturbing" factors. However, the record reveals that at least at the office of the Sun-Times, he made no effort to assuage any resentment employees may have harbored against the publishers, for, as his own testimony reflects, he utilized the occasion of that chapel meeting to berate the publishers for not offering wage increases and to accuse them of bad faith generally.

On October 29, Randolph replied to the Association's complaint as follows:

> I am informed [Pilch] has made a sincere effort to eliminate any cause for complaint as to matters mentioned. I hope his efforts have been successful.

Indeed, as the records shows, the complaint to Randolph did meet with a measure of success. Except at the Tribune, where subnormal production and difficulties with overtime work continued, there was substantial improvement, although not full restoration, in production during the next 2 weeks.[25] In that period the question of production difficulties was called to Randolph's attention on two further occasions. The first was in the form of a letter from the Association, dated November 4, in which the Association acknowledged an amelioration of the slowdown condition following Pilch's chapel meetings but stated that full production had not yet been restored at all papers. To that Randolph replied that Pilch had informed him that the Association's assertion was not founded on fact, and stated that if the Association had any specific complaint it should take it up with Pilch. The other, was at a negotiating meeting on November 13, when the specific complaint was made to Randolph that 23 men at one office refused to work overtime. To that, Randolph replied that he would not ask men to work overtime against their wishes, unless and until the wage issue was settled. After the breakdown of the Randolph negotiations on November 14, there was a recurrence of composing room troubles, brought to climax about November 20, when the publishers, making an issue over the refusal of the employees to identify their work, threatened to enforce obedience to office

[25] The improvement reflected itself immediately after Pilch's visit at the Tribune and the Herald-American. At the Sun-Times, production fell off still more on October 29, but improved sharply in October 30. There are no records in evidence reflecting the situation at the other newspapers.

rules by discharge action. This led to extended chapel meetings at the Sun-Times and Tribune which resulted in a virtual paralysis of production for 1 or 2 days. The trouble was finally adjusted, however, after the intervention of Pilch who instructed the Union's members to identify their work as required by office rules. Thereafter, in the remaining few days before the strike began, production was normal.

3. HAMMOND, INDIANA.

For 40 years, the Hammond Times had operated its composing room, organized on a closed shop basis by Chicago Typographical Union No. 16, without a formal contract. Instead it had conformed its wages, hours, and working conditions to those established between Local 16 and the Chicago Newspaper Publishers Association, without any independent collective bargaining. Prior to the Chicago strike, neither the Times nor Local 16 made any demand for bargaining negotiations, although a number of informal conferences were held at which Local representatives endeavored to sound out William Harrigan, the Times business manager, as to the amount of wage increase the Times would be prepared to grant. The Times never submitted any wage figure, but stated it would abide by whatever settlement was reached at Chicago. At a meeting between Harrigan and James Rhodes, of the Local 16 Scale Committee, held on November 15, 1947, after the Chicago negotiations had deadlocked and it was clear that Local 16 would call a strike, Rhodes asked Harrigan what he proposed to do if the Chicago papers were struck. Harrigan replied that the Times expected to publish with Union printers regardless of what happened at Chicago. On the basis of this conversation, Rhodes was led to believe that the Times would go along with the new wage scale adopted by Local 16. Harrigan, on the other hand, assumed, according to his testimony, that the men would continue to work at their old scale. On November 25, after Local 16 had adopted a new newspaper scale and had voted to strike unless this was met, it informed the Times that unless advised to the contrary it would assume that the increased scale would be paid. The next day, the Times informed the composing room employees that the

wage increase should await an agreement with the Chicago publishers. Thereupon the employees went out on strike.

On December 6, the Times, for the first time, made a formal bargaining demand, writing Local 16 that it was ready to meet and bargain in good faith. Pursuant to that demand, Local 16 met with the Times on December 10 and thereafter, offering Form P-6A, or as an alternative, Conditions of Employment. When the Times rejected both, Local 16 asked for a complete counter-proposal, but the Times declined to present one unless Local 16 agreed in advance to go along with a contract for a year. The Times never made a wage proposal. As Harrigan conceded at the hearing, it did not want to make any wage offer except on the basis of the Chicago settlement.[26]

4. South Bend, Indiana

The most recent contract between the South Bend Tribune and South Bend Typographical Union No. 128 was to expire December 31, 1947. About 60 days prior thereto SBTU No. 128 served notice of termination on the ITU prescribed form. Four meetings were held in November. SBTU No. 128 offered, and the Tribune rejected, P-6A or Conditions of Employment. The Tribune's sole offer was to enter into a new contract for a year's term, in the same form as the expiring one, but with the addition of a provision that "Any clause in said agreement which is contrary to law is hereby deleted." Despite the local union's repeated requests, the Tribune declined to negotiate on the issue of wages unless and until a form of contract for a fixed duration term of 1 year was first agreed upon. SBTU No. 128 representatives stated that such a contract would be contrary to directions received

[26] The General Counsel contended, that on various dates in October and November, wilful slow-downs in composing room operations occurred at the Times. This contention was sharply disputed by the Respondents. Except for some testimony that men were observed standing idly about on one day, a circumstance adequately explained by other testimony in the record, no direct evidence was offered to support this contention. Reliance was placed entirely upon records showing that on certain days the newspaper was late in getting to the press. Other controverting evidence was adduced, however, indicating that the delays might just as reasonably be attributed to factors other than slowdowns, factors which were not ruled out by the evidence offered on behalf of the General Counsel. On the basis of the entire record on this phase of the case, it is found that the General Counsel failed to establish by a fair preponderance of credible evidence that slow-downs occurred at the Times as contended.

from the ITU, and that its acceptance by them might entail loss of membership, old age and death benefits. At the last November meeting, an SBTU No. 128 representative submitted a handwritten form of proposal—with provision thereon for the signatures of the negotiating parties—that wage rates to be agreed upon be put in effect for a year, that negotiations continue on other sections until agreement was reached, and that there be no work interruptions in the meantime.[27] This was rejected by the publisher on the ground that it desired to negotiate an entire agreement at once. Thereafter, no further meetings were held until February 1948. In the meantime, shortly before the old contract expired, the Tribune unilaterally placed in effect a wage increase. In February, SBTU No. 128 again asked to negotiate wages, but the Tribune still declined to do so except upon the condition noted. The Tribune, without offering a specific proposal, suggested that the matter might be handled by an exchange of letters. But SBTU No. 128 replied that while it was willing to study any such proposal, it believed, on the basis of ITU advice, that a year's agreement even in that form would not secure ITU approval, and that it did not want to risk trouble with the ITU by entering into an unapproved arrangement of this kind. There the matter rested, at least until the time of the hearing. Relations have continued to remain harmonious. There have been no strikes or slow-downs.

5. Sioux City, Iowa

The course of bargaining here varies somewhat from the pattern heretofore disclosed. It began in the usual manner with the Sioux City Typographical Union No. 180 serving on the Journal-Tribune Publishing Co.,[28] the ITU prescribed termination notice 60 days prior to the December 31, 1947 expiration day of the then existing contract; with the submission by the Local at the first meeting of Form P-6A, its rejection, and request for counterproposal; with the subsequent submission by the publisher of a counterproposal, containing no wage figure, and providing in essence for a year's extension of the

[27] A wage agreement for a term of fixed duration, such as this, was contrary to instructions in ITU post-card bulletins. There is no evidence, nor may an inference properly be drawn, that this proposal had the approval of the International.

[28] Publisher of Sioux City Journal, Journal-Tribune, and Sunday-Tribune.

old contract with the deletion of any provisions that might be illegal; with the Local expressing objection to any contract not terminable on 60-days notice; and with the publisher insisting upon a year's contract as a prerequisite to the discussion of wages. After negotiations had been in progress for several weeks, SCTU No. 180, on December 2, 1947, submitted a "Scale of Wages and Working Conditions," outlining merely the basic provisions for wages, hours, holidays and vacations, but fixing no term and containing no provision for signature. In response to the publisher's query, the Local's representatives stated this would not constitute a "verbal agreement" for a year, but that as individuals they could assure the publisher that they would not be involved in wage increases that year. At the next meeting, the publisher submitted a substantially similar working agreement, containing, two additional clauses: (1) a clause referring all disputes to a joint standing committee of two representatives of each party with provision for arbitration in the event of a deadlock; (2) a clause stating that the memorandum would be binding for a year. Space was also provided for the initialing of this memorandum by the parties.

After submission of the publisher's proposal to the ITU, SCTU No. 180 was advised that it would meet ITU approval if the arbitration provision was deleted from the standing committee clause, and a 60-day cancellation provision was inserted in the duration clause. With regard to the 60-day cancellation clause, the Local was advised it was "an absolute 'must' for your union to properly protect itself." On December 30, SCTU No. 180 submitted a proposal in the form approved, except that it reinserted the arbitration provision (adding that ITU General Laws were not subject to arbitration) and also inserted a "General Laws" clause identical to that contained in P-6A. The publisher objected to the addition of the "laws" clause and to the change in the standing committee clause and it was finally agreed that the "laws" clause and the standing committee clause be stricken in toto. That left, apart from the wages and hours provisions, only the duration clause. As to that, the publisher agreed to the inclusion of the 60-day cancellation option, upon securing the personal assurance of the Scale Committee members that they would not seek

a wage increase within a year. With this memorandum as an agreed upon framework, the publisher then, for the first time, proceeded to make a wage offer. At an SCTU No. 180 meeting held shortly thereafter, the publisher's wage offer was rejected by the membership. At a meeting with the publisher on January 2, 1948, SCTU No. 180 withdrew its assent to the wage memorandum form previously agreed to, and, thereafter, submitted the "short form" Conditions of Employment." After a number of further conferences, a wage settlement was affected, and the publisher advised SCTU No. 180, that it would go along with the "short form" Conditions with the preamble eliminated. That is where the matter rested at the time of the hearing.

(b)

The Journal-Tribune's contract with Sioux City Mailers Union No. 97 expired on September 1, 1947. Early negotiations which began in June were complicated by a difference of opinion between the parties concerning the effect and meaning of an Iowa law affecting closed shop contracts and the inability of the parties to agree upon a form of contract, as well as by wage differences. After the effective date of the amended Act, SCMU No. 97 informed the publisher that it was no longer willing to enter into a contract signed, verbal or otherwise. About the middle of October, the parties agreed to a wage settlement. Shortly after the new wage scale was put into effect, SCMU No. 180 posted Conditions of Employment. The publisher wrote the union strenuously objecting to the posting, and SCMU No. 97 thereupon withdrew the Conditions. The publisher is now operating on the basis of the agreed upon wage scale, without a contract or other understanding of any kind, but—as the publisher's witness was prompted to add—with mailers.

6. Detroit, Michigan

There are variations, of course, and the ending is different, but in more essential respects the course of bargaining at Detroit follows the Chicago pattern. Negotiations were conducted jointly by Detroit Typographical Union No. 18 and Detroit Mailers Union No. 40 with the three Detroit newspaper publishers,[29] acting, as in the

[29] Publishers of the News, Free Press, and Times.

past, as a group through the Detroit Newspaper Publishers Association. Before the October 31, 1947, expiration date of the contracts, termination notices on the ITU prescribed form were sent by the Locals. At the first meeting, on September 17, 1947, the Locals submitted the ITU standard form of proposal that there be no contract and that the publishers recognize no obligation on the part of the Locals to do other than comply with Conditions of Employment.[30] The Association insisted upon a contract, and the Locals, without abandoning their position that there should be none, suggested that the Association submit a counterproposal, stating that if the parties could arrive at a mutually agreeable contract it might be all right. At the third meeting, on October 16, the Association submitted marked up copies of the old contracts, leaving wage and union security provisions open, but deleting the "struck work" and "general laws" clauses, as well as all provisions which expressed or imputed the maintenance of closed shop conditions.[31] The Locals complained that the Association's proposal was incomplete, in that it contained no wage scale. But the Association took the position, which it continued steadfastly to maintain throughout the negotiations, that it would not discuss money until it knew precisely what it was buying.

At the next meeting, on October 23, the Locals submitted their counter-proposal—Form P-6A. The proposals offered by the respective parties were fully discussed, supporting reasons and arguments being advanced by each side. A number of specific clauses of P-6A were objected to by the Association, some on legal, others on practical grounds. But it was principally on the issue of the 60-days' cancellation clause, as well as on the Association's refusal to discuss wages without a settled framework, that the negotiating parties parted company. The Association's principal argument was that in addition to seeking an evasion of the law, P-6A gave no assurance of stability in the contractual relationship.

[30] Conditions of Employment, although frequently suggested, were never actually presented at Detroit.

[31] In a subsequent proposal, however, the Association restored the "laws" clause which it revised to conform to the "laws" clause in P-6A, and also reinstated the "struck work" clause, prefacing it with the words, "so far as permissible under the law." The Locals never specifically objected to the deletion of the provisions relating to the closed shop.

The Locals' answer was that they had no intention of disturbing the wage scale absent extraordinary conditions, and that they would not cancel the contract, and would endeavor to find some other solution if, for example, exceptional circumstances required the publishers to hire a non-union employee. But, at the same time, the Locals did not conceal that they were reserving the right to "pull out" at any time they considered the publishers were tampering with their "historical rights." It was their assertion that P-6A supplied a proper basis for a contract, and that, while they were prepared to consider any suggestions, they regarded the substance of P-6A to be essential to the protection of their interests. Further conferences proved fruitless. By October 30 it was apparent that the parties were deadlocked. A strike notice was filed.

On November 24, the Association opened a 3-day series of meetings with Randolph, who, according to his opening statement, had come to Detroit, as required by ITU laws, to investigate and compose the differences which had deadlocked the negotiations. In sum, the Randolph negotiations at Detroit were a repeat performance of his negotiations at Chicago, except that the Detroit publishers did not go as far as their Chicago brethren in an effort to find a solution. As at Chicago, Randolph referred to five ITU objectives: the protection of the right not to work (1) with non-union men, or (2) on non-union goods, or (3) where jurisdiction was being interfered with; and, in addition, (4) no contract, and (5) more money. He said that these could be met by Conditions of Employment or P-6A; that under the Conditions, if the publishers committed acts at variance with the basic rights of the Union, it could cease work at once; that under P-6A it could similarly defend its rights, although it would be held back for 60 days. He stressed, above all; the needs and desires of the employees for more money, and said this could be accomplished without a contract. The Association proposed certain revisions to the proposal it had previously made, but Randolph stated that he could provide no answer to any proposal which was not complete, including wages. Finally, with Randolph insisting on a complete proposal and the publishers refusing a scale offer until they knew definitely the framework in which it would be placed, the conferences at

Detroit, in like manner to those at Chicago, came to an inconclusive end.

After the Randolph conferences, a number of further meetings were held without result. At these, the Locals urged a voluntary wage increase with no strings attached. Finally in March 1948, after the publishers had settled with other crafts on the basis of a 12 percent increase, they offered to put in effect a similar increase for composing and mailing room employees upon the verbal assurance of Union representatives that no further increase would be requested until October 1948. The assurances were forthcoming and the increases made effective.

Slowdowns: Following the failure of local negotiations about October 30, 1947 (before Randolph's visit to Detroit), a strike notice against the Times was filed under Michigan's Strike Control Act.[32] The strike vote required under that Act was scheduled for November 19, but was stayed by an objection filed on behalf of the publisher.[33] For a period beginning about November 19, the production and distribution of the Detroit newspapers was delayed in varying degrees as a result of a series of chapel meetings and other work interruptions occurring either in the composing rooms or mail rooms, but principally in the latter. Production was subnormal at the Times from November 19 to December 2 and from December 9 to 13; at the Free Press from November 20 to 22 and from November 28 to December 2; and at the News from November 19 to November 21 and from November 27 to December 21. Except for some delays in the Times composing room,[34] conditions were normal during the period of Randolph's visit, but deteriorated sharply for several days after he left.

After the first chapel meetings, employee delegations visited management to complain of management's failure

[32] Public Act No. 318, L. 1947.

[33] The objection was based upon the grounds that the unit was an improper one and that the issue as formulated by the union—"upward revision of wages"—was incorrect. The State Mediation Board ruled for the Union, and an appeal was taken to the Circuit Court of Wayne County on November 18. The Michigan Attorney General thereupon ruled that the appeal operated as an automatic stay of the election. Up to the time of the Detroit hearing (April 1-3, 1948), the Court had not yet determined the appeal.

[34] Mailroom operations at the Times were normal during that period.

to provide wage increases. Union witnesses denied that either the Locals or the International had ever officially authorized a slowdown, and at least as to the International there is no evidence from which a contrary inference may reasonably be drawn. The association brought the attention of the ITU to the slowdowns on only one occasion—in the form of a telegram to Randolph dated November 20, 1947, calling upon him to restore normalcy. To this telegram, Randolph replied, perhaps facetiously, that "8 (a) (3) and 8 (b) (1) * * * of the Taft Hartley Act might prevent me from interfering with your employees if they are engaged in concerted action for mutual aid and protection." Within a day or two thereafter, however, the initial slowdowns ceased, except to a limited extent at the Times, and this subject was not again raised with Randolph at any time thereafter. Following the breakdown of the Randolph negotiations, there was a revival of slow-downs at all papers lasting several days. But this condition was corrected, according to the undisputed and credited testimony of DMU No. 40 President Burns, as a direct result of Randolph's insistence made to him in a telephone conversation that he (Burns) "keep the men in line." On this state of record, I consider the facts insufficient to impute responsibility for the slowdowns to the International or its officers, the sole respondents in this case, even though I believe that a contrary inference might be warranted as to the Detroit locals, since it is clear, that until requested by Randolph to do so, they never took a firm stand in seeking a discontinuance by employees of such activities.

7. Buffalo

On June 5, 1947, Buffalo Typographical Union No. 9 submitted to the Buffalo newspaper publishers[35] a proposal for a new 1-year contract to supersede the one that was to expire on August 19, 1947. However, when negotiations actually opened in early August 1947, BTU No. 9 proposed Form A as an addition to its original proposal. After contacting ITU headquarters, at the request of the publishers, BTU No. 9 advised the publishers that the International would approve no contract which did not contain Form A clauses. It added that it would not work without an approved contract. The publishers, re-

[35] Publishers of Buffalo Evening News and Buffalo Courier Express.

jecting Form A, declined to discuss wages until a contract had been agreed upon. After five meetings had failed to lead to an agreement, BTU No. 9, on August 14, formally withdrew its prior contract proposals and offered instead to negotiate Conditions of Employment. At subsequent meetings in August and September, the publishers submitted a counterproposal for a 1-year contract. and, as an alternative, offered a signed wage agreement. But BTU No. 9, continuing to insist on Conditions of Employment, rejected both. At these meetings, the publishers' contract proposal was matched against the Conditions of Employment form, full discussion was had, and the Local agreed to certain revisions in the Conditions form to conform to the contract. The publishers during this time also offered a wage increase but no agreement was reached thereon. During these and other discussions, BTU No. 9 representatives stated on a number of occasions that Union men would not work with non-union men, and that as individuals they had a right to quit if the publishers hired non-union men.

Negotiations broke down on the issue of wages as well as on the publishers' insistence upon a contract, and the controversy was referred to the New York State Mediation Board. At a meeting before a conciliator on October 10, BTU No. 9 stated that if the publishers wanted a contract they could have one—and submitted P-6A. But the publishers, after ascertaining that this in essence was the much publicized Baltimore proposal, rejected P-6A, without so much as examining or discussing it. Instead, the parties turned to a discussion of wages, both sides agreeing that this represented the more important point of departure. A wage adjustment was finally agreed upon, coupled wth an understanding that other conditions not in violation of law would remain as before. The question then arose as to how the understanding should be formalized. It was agreed by the negotiators that the matter should be handled by an exchange of letters. However, following the BTU No. 9 meeting at which the wage settlement was approved, the Local representatives notified the publishers that the letters embodying the understanding would have to contain clauses (c), (e) and (i) of Form P-6A. The publishers declined to have these inserted. After further discussion, it was finally agreed that BTU No. 9 would post Conditions of Employment

embodying the new wage rate and that the publishers would post notices rejecting the Conditions and setting forth that it was their understanding that the old contract, except for such conditions (undefined) as might be violative of the law and the new wage scale, should continue for a year. Each party would then remain bound according to its own understanding, and if no conflict arose, there could be no trouble. That procedure was substantially followed. Since that time, the composing room operations, including hiring procedures, have continued as in the past.

8. Albany

The negotiations between Albany Typographical Union No. 4 and the Albany newspaper publishers[36] follow the now familiar pattern with no deviations of consequence. In July, several months before the October 31, 1947 expiration date of the last contract, several meetings were held, at the request of the Local, to discuss an extension. The Local submitted, and the publishers rejected, Form A. Thereafter the usual termination notice and the usual proposal that there be no signed or verbal contract were submitted by the Local. At meetings held between September 17 and October 6, the Local suggested, although it never actually submitted, Conditions of Employment to be posted by either the Local or the Publisher, or both. The publishers, on the other hand, insisted upon a contract of fixed duration. Although the Local said it would sign a contract if one could be agreed upon, it refused to consent even tentatively to even the formal clauses of the old contract, when a clause by clause examination of that contract was undertaken. Apart from stating that they desired the former contract, except as modified by law, the publishers declined to submit a former counter-proposal on the ground that such a course would be futile since the Local was clearly following the ITU policy to the letter. On October 15, the Local submitted Form P-6A attached to a full contract including wage rates. Thereafter, the publishers objected, either on legal or practical grounds to substantially all the clauses, in paragraphs (a) to (i) of P-6A, and objected particularly to the 60-day cancellation provision. On October 23, the publishers for

[36] Publishers of **Times Union** and **Knickerbocker News**.

the first time submitted a formal counterproposal, omitting all reference to wages, and requesting the revision or omission of numerous clauses of the old contract, including a number of clauses affected by the new law. The Local, although never formally rejecting the counterproposal, indicated that it was unacceptable to both the ITU and the Local, complaining particularly that it was not a full proposal because it omitted reference to wages. Nevertheless, the publishers refused to discuss wages until the form of contract was settled. In November, after negotiations became deadlocked, the matter was submitted to mediation. The publishers rejected a suggestion of the Local that wages and other economic conditions be agreed upon, to be followed by a resolution passed by the Local—but not having the force of a contract—that these conditions would be frozen for a year. They also rejected a suggestion of the mediator that such an understanding, if reached, be set forth in a letter in such a form that it could not be construed as a contract. The publishers did agree to an exchange of letters which would legally bind the Local on wages and economic terms for a year's period; but the Local declined to enter into any legally binding agreement not cancellable on 60 days notice. Up to the time of the Albany hearing (April 6, 1948) no settlement had been reached. The publishers, although indicating their willingness to grant a wage increase, have consistently maintained the position that any wage offer must be conditioned upon the prior settlement of a contract for a year.

9. New Bedford, Massachusetts

On August 21, 1947, New Bedford Typographical Union No. 276 sent the publisher of the New Bedford Standard Times, the ITU prescribed 60-day notice terminating their contract which was to expire on October 31, 1947. Thereafter, numerous meetings were held in which the Local offered first the Conditions of Employment form and then P-6A, while the publisher proposed a written contract for a year including certain wage increases, but no agreement was reached. At one meeting, the chairman of the Local's scale committee stated in substance that the Local was following in detail the directives of the ITU "right or wrong"; that it had no authority to discuss policy, but only wages. At another meeting, where the legality of

the closed shop was raised, he stated in substance that "law or no law," the publishers would never get members of the Union to work with non-union men. On a later occasion in December 1947, an ITU International representative, who had been called into the negotiations, stated in an "off-the-record" conversation that if non-union men came into the composing rooms of the Standard-Times, their body odor would be such as to nauseate the union men who would leave their jobs. In December, the negotiating parties finally agreed upon a wage settlement without a contract of fixed duration. The publisher advised the Local that it did not desire to have Conditions posted, but agreed to send the Local a letter stating that the new wage scale would be effective for a year and that it would operate under the old contract except to the extent it was violative of the law. Some weeks thereafter, however, the publisher received by mail Conditions of Employment incorporating the new scale. Since the settlement, all hiring and discharge procedures have continued as in the past.

In addition to its relations with NBTU No. 276, the publisher also had a contract with the New Bedford Mailers Union No. 115, which expired on December 1, 1947. The Mailers' Local merely presented Conditions of Employment, stating that there was no point in presenting P-6A, since it knew the publisher would reject that form. The publisher at first rejected the Conditions and made a counterproposal. At a meeting in January 1948, at which an International representative was present, wages only were discussed, an understanding was reached, and the publisher expressed its willingness to close the matter in accordance with the procedure followed in the case of the Typographical Union settlement.

10. Columbus, Georgia

The negotiations between the Ledger-Enquirer Company[37] and Columbus Typographical Union No. 222 started out in the ordinary fashion but later took an unusual turn. From August 15, 1947, when negotiations began, until October 20, 1947, about 10 meetings were held. At these, the Local proposed, successively, Form A. Conditions of Employment and P-6A. All were rejected by

[37] Publishers of Columbus Ledger and Columbus Enquirer.

the publisher. The objection to P-6A was directed principally to the 60-day clause, although the "struck work" clause and clause (e), recognizing the inability of the Union to compel its members to work with non-union printers, were also mentioned. At one point, however, the Union, varying somewhat from the more familiar pattern, proposed a bilateral agreement, similar to one executed in two other Southern cities. Under this proposal, the old contract, "except as to such provisions as are in violation of the Taft-Hartley Law," would, with a new wage scale, have been extended for a year, subject to the right of cancellation by either party on 60-days notice. But this, too, was rejected by the publisher.

On October 20, 1947, at a meeting attended by ITU International representative F. T. Carter, the parties agreed to place a wage increase into effect and to continue negotiations for a new contract. In accepting this arrangement, the Local made it clear that it was "not to be considered as a meeting of minds or an agreement between Management and the Union." Thereafter, up to February 6, 1948, about 8 additional meetings were held, but no agreement was reached on a form of contract.

On February 8, the publisher submitted a complete proposal for a 1-year contract containing certain safeguards against charges of discrimination flowing from the Union's control of composing room procedures and apprenticeship training. The proposal also provided, inter alia, that foremen were to be Union members; that reproduction was to be eliminated; that teletypesetters were to be outside the contract; and that an employee discharged by the foreman of the day crew should not be hired by the foreman of the night crew, and vice versa.[38] When this proposal was submitted, the Local was advised that if it was not accepted, and no other agreement was reached, the publisher intended unilaterally to revamp its hiring procedure so as to protect it against possible violations of the Taft-Hartley Law, and, in addition, to eliminate reproduction. At the next meeting, on February 17, the Local turned down the publisher's proposal and resubmitted P-6A which the publisher again rejected.

[38] The Columbus Union operated two separate chapels, one for the morning paper, the other for the evening paper.

On February 18, the publisher posted a bulletin board notice, stating that, beginning the next day, the following in substance would go into effect: (1) Certain changes in the supervisory structure of the composing room;[39] (2) the elimination of reproduction; (3) all applicants for employment must submit written applications to be transmitted to the management office for action; (4) a discharged Enquirer employee could not, without Management approval, be employed in the Ledger composing room (or vice versa); and (5) an employee, absent without permission, would be regarded as having terminated his employment, and would be required to file a new application for reemployment. This notice radically changed certain preexisting practices relating to hiring, particularly by eliminating the slip-board and substitute hiring practices which had in the past prevailed.

At a meeting on February 21, ITU Representative Carter, speaking for the Local, formally demanded that the publisher withdraw the notice pending further attempts to negotiate a contract. This the publisher declined to do. On February 22, the Local, declaring a "lockout," went out on a strike with ITU approval. The reason for the strike, as stated by the Local, was the change in conditions brought about by paragraphs (3), (4) and (5) of the publisher's notice as referred to above —but not by paragraphs (1) and (2). The General Counsel's representative conceded at the hearing, the record reflects, and it is found that the elimination of reproduction was not an issue in arriving at the decision to strike.

11. Jamestown, N. Y.

Negotiations between Jamestown Newspaper Corporation[40] and Jamestown Typographical Union No. 205 were clouded by a dispute relating to jurisdiction over tele-

[39] The former mechanical superintendent was designated as "general foreman," and the former foremen of the day and night composing rooms, respectively, were designated as "assistant foremen." The three individuals occupying these positions, all of whom were Union members, were retained. The purpose was to place the former mechanical superintendent in a position where he would have greater authority and direct responsibility to management for hiring. There was no intent to eliminate Union foremen or reduce their authority with respect to discharge or discipline.

[40] Publisher of Jamestown Post Journal.

typesetting equipment.[41] Some time before the last contract expired on November 1, 1948, the publisher had purchased teletype machines and had commenced training non-union operators in their use, although the contract provided that if new composing room processes were installed, none but union members would be trained thereon. After the usual 60-day notice was served on September 1, 1947, the publisher submitted a contract proposal for a 1-year term with an automatic extension thereafter pending the settlement of a new agreement. The proposal provided, inter alia, for the elimination of all closed-shop provisions as well as all reference to the ITU General Laws. The "laws" had traditionally been incorporated in past contracts and the publisher had never taken exception to them in the past. The Local expressed no objection to the elimination of the closed shop provision. But it did object to the duration clause and also to the deletion of the General Laws clause which, among other things, would have protected its jurisdictional claim over teletypesetting equipment. On September 4, the Local countered the publisher's proposal by submitting a Conditions of Employment form which provided for a wage increase. The publisher rejected the Conditions form as a modus operandi, and declined to discuss wages until all other matters had been settled.

Negotiations reached a deadlock, and in mid-October an International representative was called in. In response to the publisher's demand for a contract proposal, the Union submitted a P-6A form, which the publisher promptly rejected. About a month later, the publisher submitted a complete proposal for a 1-year signed contract, containing a $6 wage increase, but specifically reserving to the publisher the right to install teletype tape perforators, with the proviso that regular composing room situations would not be reduced for 1 year. This proposal, submitted to a Local membership meeting, was unanimously rejected, and a strike was authorized. Thereafter, the Local made its last offer—to continue to work without a contract if the employees received the $8 increase allowed the neighboring Buffalo printers. It also indicated

[41] Under this process, a tape is punched by an operator through a typewriter keyboard. The tape is then taken to the composing room where it is placed in a unit of the linotype or monotype machine. It then runs the machine automatically, setting type in much the same manner as a player piano plays without a player at the keyboard.

that its members might be willing to work for less if it could retain jurisdiction over the teletype equipment. The publishers rejected this offer, proposing, instead an arrangement of indefinite duration, to be evidenced by signed minutes of a Local meeting, under which the Local would agree, pending further negotiations, to continue working under provisions of the old contract to the extent that the publishers might determine such provisions not violative of the law, and which would provide also for a $6 wage increase and specific abandonment by the Local of its jurisdictional claim over the teletype work. Rejecting the publishers' proposal, the Local, on December 2, 1947 advised the publisher that unless it acceded to the Local's Conditions of Employment by that evening, its members would refuse to return to work. The publisher requested that the matter be submitted to arbitration, but no reply was received. That evening the strike began.

12. Rockville Center, New York

The last contract between Daily Review Corporation, publisher of Nassau Daily Review Star and Nassau County Typographical Union No. 915 expired on July 2, 1947. Negotiations for a new contract began in the spring of that year. The principal issue was over wages. After six meetings had failed to bring about agreement, the Local called in an International representative. A number of additional meetings narrowed the area of difference. At a meeting on July 15, 1947, the ITU representative exhibited to the publisher a telegram he had received from ITU headquarters stating that any contract thereafter executed must contain an "all or nothing" clause, providing, " if any part of this agreement is declared illegal or inoperative by any agency or court, this entire agreement shall thereupon become null and void." A copy of this clause was submitted to the publisher who, however, made no commitment concerning it at that time. On July 17, two meetings were held. Both the Union and the publisher are in agreement that full accord was reached at these meetings concerning wages, hours, and other contract conditions. But they are in sharp conflict as to what occurred at that meeting with regard to the "all or nothing" clause. According to the Union's version, the publisher expressly agreed to the inclusion of the invalidation clause in the precise language set out in the ITU

telegram. According to the publisher's version, however, the Union was advised at the first meeting on July 17, that the publisher would not agree to such inclusion, and, at the second meeting where apparent agreement was reached on all terms and conditions of the contract, the clause was not mentioned at all. In the state in which the record on this phase of the case has reached me, I am unable definitely to resolve the conflict.[42]

In any event, it appears that on the evening of July 17, the Local met and approved the contract settlement understood to have been reached that day. On July 24, the Local presented to the publisher the contract it had drawn, containing the "all or nothing" clause.[43] The publisher advised the Union that it would not sign a contract containing the clause. Thereupon, the ITU representative, after contacting ITU headquarters at Indianapolis, notified the publisher that in that event the only solution was for the Union to operate under Conditions of Employment. According to testimony, not specifically denied, and accepted as true, the publisher, after ascertaining that the conditions would incorporate the agreed upon wage scale, indicated its acquiesance and stated it would pay the wage scale on the following pay day. At a Local meeting that night the Conditions were approved, and were posted on August 8. However, on August 11, the publisher advised the Local that it rejected and would not operate under the terms of the Conditions. Thereafter a number of meetings, extending beyond the effective date of the amended Act, were held, at which the Local took the position that it would only operate under Con-

[42] No oral testimony was presented before me on this aspect of the case. By stipulation of the parties, it was agreed to incorporate as part of the record of this case an affidavit of the publisher filed in the Indianapolis injunction proceeding before Judge Swygert, the sworn testimony of a Union representative in that proceeding, and two replying affidavits prepared by the publisher's representative for use in this proceeding, as well as accompanying exhibits. It was further stipulated that no credibility resolution need be made by me on any conflicts where, as here, I considered it necessary to a resolution to observe the witnesses. The Rockville Center situation was litigated at length in a separate proceeding before another Trial Examiner in **Matter of Nassau County Typographical Union No. 915, AFL,** Case No. 2-CB-14.

[43] Other evidence in the record of this case reflects that the ANPA Special Standing Committee, on July 22, 1947, issued a bulletin to its members cautioning them against the acceptance of the "all or nothing" clause, and suggesting "that member publishers who are in negotiations should contact this office before committing themselves to any [such] provision."

ditions of Employment or under the closed-shop agreement which it claimed had been fully agreed upon, although not executed, prior to August 22. The publisher refused to do either, and in September made written demand upon the Local and International to bargain for a contract. On Spetember 20, Randolph wrote the publisher, expressing the hope for a "continuance of friendly relations," but stating, inter alia, "that there is no possible chance of the law of the land compelling us to agree to anything." On October 13, the Local submitted a P-6A form of contract which the publisher rejected as "sham." Efforts at mediation failed, and on November 9, 1947, the composing room employees went out in strike.

13. New York City

The last contract between the Publishers Association of New York City, acting on behalf of the principal newspaper publishers of that city,[44] and Typographical Union No. 6, expired March 31, 1948. Negotiating meetings began on February 5. During the early meetings, the Local suggested as possible courses, Conditions of Employment, P-6A, or, as a third alternative, a settlement of economic issues and the continuation of negotiations as to other matters. The Publishers, on the other hand, refused to discuss wages or other economic terms unless first satisfied that the Local was prepared to execute a legal contract frm in term for at least a year. The Publishers, objecting principally to the unwillingness of the Local to enter into a binding agreement for more than 60 days asked also for the elimination of closed shop, struck work, and certain other provisions of preceding agreements, upon the ground that they no longer were permissable under the federal law. But, to make clear that the elimination of these provisions was being sought in good faith, and solely because of their doubtful legal validity, the Publishers proposed a "Mutual Guarantees" clause, providing for the automatic reinstatement in the contract of any excluded clause later declared legal by legislative enactment or decision of a court of highest recourse.

At the eighth meeting, on March 23, the Local submitted, as a basis for resolving existing differences, the New York Employing Printers formula, recently formulated in negotiations participated in by Local No. 6 as

[44] Listed in Appendix A.

well as by members of the ITU Executive Council. As was then generally know, the formula contemplated a contract for a fixed duration term of a year. Among other things, it provided that composing room work should be performed only by journeymen and apprentice printers. Journeymen were defined as (1) employees who had completed approved apprentice printers. Journeymen were defined as (1) employees who had completed approved apprenticeship training; (2) journeymen members of the Union, or (3) applicants for work in a composing room, who, upon reference to the School by an employer, secured a certificate of competency issued under procedures established by the examining board at the New York School for Printers Apprentices.[45] It provided, moreover, that all applications for work, except where the applicant held priority rights, were to be made to the foreman who alone was to be authorized to employ and assign composing room journeymen. Provision was also made for the inclusion of the usual General Laws and local laws clauses, to the extent that these were "not in conflict with law or this contract." In addition, the formula set forth a general "Statement of Intent," by the employers "to maintain all prior practices in the operations of [the] composing rooms to the fullest extent permitted by law, and to provide the maximum possible union security. No struck work clause was included, but the employers pledged "to limit composing room work to jobs obtained on a normal account basis."

At the ninth meeting, on March 26, the Publishers, rejecting the printers formula as one not tailored for their problems, submitted a proposal of their own. It provided in essence that the then existing contract, excluding provisions covered by the "Mutual Guarantees" clause, should be extended for 2 years. New wages and other economic terms were to be agreed upon. There was to be appended to the old contract a "Statement of Rules," to provide: (1) That the Publishers had no disposition to alter the historic practice of hiring Union members as foremen; (2) that the practice of substitute hiring by regular situation holders was to be continued; (3) that

[45] According to Randolph's testimony at Baltimore, the School is operated by the New York Board of Education jointly with Local No. 6, under the supervision of a person who is a member of No. 6, and teaches the ITU course of lessons in printing.

ITU laws not in conflict with law or the contract would continue to govern relations between the parties, but that the Union's jurisdiction was not to be extended beyond the coverage of the last contract; and (4) that the following seniority rules were to govern foremen in hiring:

First: Regular situation holders.

Second: Other journeymen who have worked in the department.

Third: Journeymen with experience in other composing rooms in Greater New York.

Fourth: Journeymen whose competency the foreman has no reason for doubt or men who have registered for employment after having had their competency tested by qualified and impartial examiners named by the New York City Board of Education. Foremen may not exclude as candidates for employment any individuals who establish competency.

On March 27, Judge Luther M. Swygert of the District Court of the United States for the Southern District of Indiana, Indianapolis Division, issued a decree,[46] restraining the ITU, pending the Board's determination of this proceeding, from engaging in the conduct alleged in this complaint to be violative of 8 (b) (1) (A) and (2) of the Act.

Shortly thereafter the ITU issued to its locals a statement containing "Contract Provisions Which May Be Proposed In Collective Bargaining During Pendency Of Federal Court Decree." The statement provided for a contract of definite term. Jurisdiction was defined as covering all composing room work, with particular included classifications spelled out in detail. Composing room work was to be performed only by journeymen and apprentices. The competency standards for journeymen were defined substantially in the manner set out in the Employing Printers formula.[47] It was provided that composing room

[46] **Evans v. International Typographical Union, No. 1587 Civil.**

[47] The only difference was in the third standard where the words "Joint Examining Board" were substituted for "School for Printers Apprentices," the obvious reason being that such schools exist only in a limited number of localities. The "Joint Examining Board" is defined as "composed of two representatives of the employer and two representatives of the union who shall give such applicants for work the same degree of examination for competency as is given to apprentices seeking to qualify for journeymen."

foremen alone were to be authorized to receive applications for employment, to hire, discharge, etc., and that foremen were to be Union members. A "Statement of Intent" similar to the one in Employing Printers formula was included.[48] Also included were General Laws, standing committee, picket line,[49] and liability limitation clauses identical or substantially similar to that of P-6A. A new "Local Union and Chapel Rules" clause was substituted for clause (b) of P-6A.[50] Clauses (d) and (e), and, except as noted, clause (g) of P-6A were omitted.

On March 31, 1948, Local No. 6, in accordance with general instructions issued by the ITU, notified the Publishers Association that, pursuant to Judge Swygert's decree, it was withdrawing all proposals submitted since August 22, 1947. It requested that negotiations continue with the object of reaching an agreement for a definite term within the terms of the decree. At a meeting the same day, Local No. 6 submitted to the Publishers a new complete contract proposal for a 1-year term. The new proposal included substantially the contract provisions recently recommended by the ITU; but there were some significant exceptions. Thus, for example, it omitted the clauses specifically requiring the publishers to hire only Union foremen and not to handle struck work, and substituted instead a declaration of intent by the publishers, insofar as possible under the law, "not to provoke disputes with respect to Union jurisdiction, Union security, and the Union's position on the handling of struck work." Thus, too, it omitted the $25 liability limitation clause, and made a number of minor revisions.

Numerous meetings followed. The Publishers proposed divers amendments to the Local's proposals; these and other differences were fully discussed, and numerous concessions were made by each side.[51] By the 23rd meeting,

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[48] But it suggested as an alternate proposal covering "struck work" a provision substantially similar to the first sentence of Clause (g) of P-6A.

[49] The picket line clause was made applicable however, only to "authorized strikes" by any other ITU subordinate union.

[50] This stated merely that nothing in the contract shall be construed to interfere with any rules of the Union for the conduct of its own affairs, not in conflict with law or the contract.

[51] The details of the negotiations are unimportant. One major item of difference that should be mentioned, however, concerned the definition of the Union's composing room work jurisdiction. As to that, the Local

on April 14, all issues, including wages were settled. The members of the Local Scale Committee agreed that they would heartily recommend and indorse" acceptance by the Local membership of the agreement tentatively arrived at. A Local No. 6 membership meeting was arranged for April 18 to vote on the tentative agreement. But before the meeting was held, Local No. 6, on April 16, received from the ITU Executive Council, the following telegram:

> The proposal of the Newspaper Publishers of New York for a contract reached us late Friday. Partial examination indicates it cannot be approved as complying with ITU laws and collective bargaining policy. Therefore, Section 2, Article 3, ITU General Laws [providing for prior ITU approval] must be complied with and you are advised not to submit the proposal to the Union for action until further negotiations have resulted in a contract proposal which can be approved.

Nevertheless, at the April 18 meeting of the Local, a motion was presented to accept the agreement recommended by the Scale Committee. The motion was objected to on the ground that ITU laws had not been complied with, and the membership, despite the Chair's ruling that the motion was in order, voted in effect not to consider the tentative agreement until such compliance had been had.

On April 20, the Local received a letter from the Executive Council, outlining the alterations necessary for Executive Council approval. It is only necessary to mention three of them, since these are the only ones to which illegality is specifically attributed in the parties' briefs.

One, not particularly stressed, related to the picket line provision, which was included in the Local, proposal but excluded in negotiations. The ITU Council advised that this clause was necessary to comply with ITU bylaws "in the event either the printers or mailers are in strike."

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[51] (Continued)
proposed, and the Publishers resisted, the specific inclusion of "operators of photo typesetting machines." On that point the Local negotiators finally capitulated. None of the newspapers employed varitypists in its composing rooms at that time. One newspaper had a number of varitypists engaged in promotional work unrelated to the printing of its newspaper; they were represented by another union and the Local did not claim them. However, most papers, in anticipation of a possible strike, had recently hired a large number of varitypists whom they were then training, but whom they intended to discharge when a settlement was reached obviating the strike danger.

The second related to jurisdiction. Objection was taken to the failure of the tentative agreement to state that "only" journeymen and apprentices were to be employed in composing room work; the failure to include "operators of photo typesetting machines, and operators of machines such as varitypers" in the jurisdiction clause; and to the failure to provide that all questions arising from the introduction of new processes affecting composing room work were to be submitted to a joint committee, and if agreement failed, then to arbitration, with the impartial arbitrator to be governed by the rule that none but journeymen should be permitted to work on new processes. The ITU letter stressed that these provisions were necessary to guard the Union's jurisdiction against encroachment by technological changes, to protect the members' job opportunities, and to ward off any threat to their future employment flowing from the installation by the New York publishers of a large amount of varityper equipment.

The third major objection related to the competency standards for journeymen. The tentative agreement had substituted, in lieu of the Local's proposal, the four seniority rules governing the hiring of employees contained in the Publishers' proposal of March 26, quoted above. The ITU Council did not object to the first two rules, but stated that the third rule "must be eliminated" because it "would open up newspaper composing rooms to all those who have worked in Greater New York, union or nonunion, giving such applicants preference over members from outside New York. It also objected to the fourth rule which, it stated, should be redrafted to read as follows:

> Journeymen whose competency the foremen[52] has no reason to doubt or journeymen who have registered for employment after having their competency tested and certified by the Joint Examining Board under procedures established by the School for Printers Apprentices of New York City. Foremen may not exclude as candidates for employment any individuals who establish competency.

[52] The tentative agreement inserted a provision, not contained in the Union's original proposal, that "the operation, authority, and control of each composing room shall be vested exclusively in the office through its representatives, the foreman, who shall be a member of the Union.

The letter pointed out that the fourth rule, as it appeared in the tentative agreement,

> gives the Union no voice in selecting examiners or power to establish standards. Perhaps it has been assumed that the Board of Education will name "qualified and impartial" examiners who are members of the union, but we cannot stake the future welfare of the organization on an assumption that a group of persons who have no technical knowledge of the printing industry or interest in the Typographical Union will act to protect our interests.
>
> There is nothing in law which compels the union to waive all rights in determining the standards which must be met by those who seek employment on work over which the union exercises jurisdiction.

On April 21, Local No. 6 presented the ITU proposed alterations and new sections to the Publishers who advised that they found them unacceptable. The Local thereupon reported to the ITU Executive Council that negotiations had reached an impasse and requested ITU assistance. Randolph came to New York on May 7. At a meeting that day, Randolph suggested a further meeting between an ITU subcommittee of himself and Vice President Brown for the Union and a subcommittee of the Publishers. Before the further meeting was held, however, Randolph issued a statement that no proper basis had been laid for his intervention in the negotiation since, as he had learned, the tentative agreement was based upon a proposal coming from the Local rather than from the Publishers. He asserted that before a "disagreement between a subordinate union and an employer" within the meaning of ITU laws based upon such a proposal, could exist, it was necessary first that a proposed agreement be (a) adopted by the local membership, (b) approved by the ITU president, and (c) presented to the publishers. Since, according to Randolph, the Local proposal had not first been adopted by the membership and approved by him, he was without authority to participate in the discussions at that time. Accordingly it was necessary for Local 6 to start all over by laying "the proper legal background." It was at that point that the New York negotiations rested when the hearing in this case closed.

14. MISCELLANEOUS CITIES AND EVENTS.

Randolph testified, and it is found, that the ITU "collective bargaining policy," from the time of its adoption at the August 1947 convention until its application was stayed by the temporary injunction decree in March 1948, was uniformly applied by all subordinate unions, except for deviations in two, or possibly three, localities—Akron, San Francisco, and, possibly, Miami. At Akron, Ohio, the subordinate local, contrary to ITU policy, entered into a non-approved agreement extending its old contract for a fixed duration term of a year.[53] This Local had been entering into non-approved contracts for some years, ignoring the ITU, and was in disfavor with the parent organization; but no reprisal action, by way of expulsion or suspension, has been taken against it. At Miami, Florida, the deviation was probably unintentional. There, the Local, although refraining from the negotation of a formal contract, had agreed to a wage settlement, and had exchanged letters with employers expressing the understanding that the new wage scale would stand for a year. No reprisal action was taken against Miami Local, but this incident, which came to the attention of the ITU, led to a postcard bulletin caution to subordinate unions generally not to permit themselves to be trapped, as had the Miami Local, into what in legal effect was a binding contract for a year.

At San Francisco, the deviation, which was in the commercial field, led to an express ITU warning that, if repeated in the newspaper field, it might lead to ITU disciplinary action. In late December 1947, San Francisco Typographical Union No. 21 exchanged letters with the Employing Printers' Association of that city, confirming an understanding, reached between them and approved at a Local meeting, to fix a new wage scale effective during the year 1948, and to continue negotiations on other issues, without interruption of work in the meantime. The exchange of letters was thereafter submitted to the ITU. On January 16, 1948, the ITU Executive Council informed the San Francisco Local president by telegram that, after considering the matter, it had concluded that the Local

[53] The contract, however, although executed after the ITU convention, was based upon a settlement made before August 22, and extended the closed-shop provisions of the prior contract.

had violated the "collective bargaining policy" adopted at the August convention; and that it had concluded, further, that the Local president had violated the ITU General Laws "in that he has not secured approval of the International President on proposals and contracts before submission to the employers or to the union for acceptance." The telegram went on:

> For the above reasons the Executive Council hereby mandates President C. M. Baker and other officers and members of [Local No. 21] to comply with Sections 2 and 4, Article III, International Typographical Union General Laws before submitting any proposal for a newspaper agreement to the members of Local No. 21.

The telegram concluded by quoting in full the ITU bylaws provision authorizing the Executive Council summarily to expel any subordinate union or member refusing to observe a decision or action of the Council or the decision of a convention. No disciplinary action was taken against the San Francisco Local. But, as the record reflects, its "mandate" was complied with. The Local president sent a telegram to the ITU outlining the proposition he intended to submit to the newspaper publishers. He was advised that it was not in compliance with ITU laws. The Local then reached an understanding with the publishers for a voluntary wage increase, without a contract, and that concluded the matter.

The extent to which the ITU "collective bargaining policy" succeeded is reflected by statistical data in the record, showing that up to the time of the injunction hearing in March 1948, 682 scales within ITU policy had been put into effect. Of these, 368 were in the newspaper and 314 in the commercial field. The figures without reference to the particular field, are further broken down as follows:

Conditions of Employment	271
P-6A agreements	18
Other contracts	4
Voluntary increases	296
Interim openings	93
Extension agreements	2

No contract was approved during this period which did not contain a 60-day cancellation clause. Of the four contracts, other than P-6A agreements, referred to above, at

least two were in the newspaper field. These contracts, approved by the ITU, cover newspaper scales at Columbia, South Carolina, and Montgomery, Alabama. Basically, each provides for a 1-year renewal of the prior contract "except as to such provisions as are in violation of the Taft-Hartley Law, but only to the extent that such provisions do violate said law; provided, however, that either party to this agreement may upon sixty (60) days written notice cancel and terminate this renewal agreement."

Randolph testified that the posting of Conditions of Employment in each instance was preceded by either actual negotiations or an attempt by the Local to negotiate on wages, hours, and other conditions. And, except possibly for the Hammond situation, where normally no separate negotiations were conducted and where there was no prior request by the employer to negotiate on these matters, the record of this case supports Randolph's testimony in this regard.

Strikes against newspaper publishers have occurred in about 11 cities since the adoption by the ITU of its "collective bargaining policy."[54] In each instance, except at Columbus, Georgia, the strike was authorized and approved by the ITU solely on the issue of wages.

No evidence was adduced to show specifically that any non-union man was discriminated against in employment by any newspaper publisher since August 22, 1947. The record reflects only two instances where non-union men were hired by newspaper publishers since that date. These were developed peripheraly through the testimony of Randolph who stated that these were the only ones that had come to his attention. One occurred at a small newspaper at Wisconsin Rapids, Wisconsin, where the employer hired a non-union man and made him foreman. Immediately afterwards the employees quit, most of them leaving town. Randolph denied that any strike was authorized in that situation, or that the ITU had been informed of the situation until after the men had quit. The other, occurred at San Antonio, Texas. There the ITU members continued to work after the non-union man was hired. Randolph

[54] At Rockville Center, N. Y.; Jamestown, N. Y.; Allentown, Pa.; Chicago, Ill.; Hammond, Ind.; Norristown, Pa.; Abiline, Texas; Longview, Wash.; Bartlesville, Okla.; Quincy, Mass.; and Columbus, Ga.

testified without denial, and it is found, that when the matter was brought to his attention, he advised the Local officials to continue working, stating that the employer might prove to be a good printer and an asset to the organization. The non-union man has since made application for ITU membership.

E. CONCLUSIONS.

1. Violation of Section 8 (b) (2)

Section 8 (b) (2), to the extent here pertinent, provides:

> It shall be an unfair labor practice for a labor organization to cause or attempt to cause an employer to discriminate against an employe in violation of subsection (a) (3) . . .

Together with Section 7, 8 (a) (3) and 9 (e), it forms part of a comprehensive scheme which outlaws the closed shop entirely, and permits other and more limited forms of union security arrangements only where certain prescribed statutory requirements, not complied with by the ITU or its subordinate locals, have first been met. The statutory scheme is designed to assure that job opportunities will not be closed to employees on the basis of their membership or non-membership in a labor organization, and that employees' security in their jobs, once obtained, will not thereafter be conditioned upon such considerations, except under the particular circumstance allowed by law. Before the amendments to the Act, an employer alone was held accountable for illegal discrimnation, and the fact that he may have been forced into such action by pressure brought to bear upon him by a labor organization did not exculpate him from responsibility. Section 8 (b) (2) was devised in part to correct this situation and to provide relief to an employer caught between the Scylla of union pressure and the Charybdis of the Board. Respondents' course of conduct must be viewed against the backdrop of these statutory objectives.

There can be no doubt, on the record of this case, that a primary purpose of the 1947 ITU "collective bargaining policy" was to continued closed-shop conditions. This is evident from a reading of various ITU bulletins, the "collective ba. aining policy" itself, the speeches and statements of Randolph explaining the "policy" and divers

releases of the ITU Executive Council interpreting it—pertinent extracts from which have been quoted above. This is apparent as well from testimony of Randolph and from various statements made by ITU and Local Union negotiators in the course of bargaining upon a local level. The ITU and its locals made no effort to conceal their purpose, although at times they sought to disguise it by phrasing it in terms of the protection of the historic "right and prerogative" of individual members not to work with non-union men. But the exercise of individual rights does not require the protection of combined union power. By collectively adopting a policy to "maintain our historic rights and prerogatives," by collectively declaring at the same time an intent "to avoid the sacrifice of (such) rights and prerogatives," by collectively providing in that policy that individual members could accept employment only under conditions approved by the ITU, and by incorporating that policy in its General Laws and making it binding upon individual members,—by all these and other means, the ITU made it unmistakeably clear that what it was trying to maintain was the "right and prerogative" of its members, acting as a labor organization, not as individuals, to refrain from working with non-union men. Where individual action not only is reserved but is commanded by group decision, it ceases to be individual and becomes collective action.

The ITU "collective bargaining policy" must be appraised not only against its declared objectives, but also in the light of the warnings, expressed in publicized ITU releases and implicit in the "Policy" itself, of the probable consequences which would flow from a publisher's efforts to disturb the existing closed shop conditions. Thus, the Council, in its official communication accompanying Form A, stated, "We will maintain our right to work only with Union men under any circumstances." Randolph, explaining the "Policy" at the convention, said "Any employer in the printing industry that undertakes to put a non-union man in the composing room has by that very act demonstrated that it is his desire to break the Union." And further, "There is no law that specifies you must tell an employer why you are striking or why you are quitting your job—without any obligation to the employer by what is now a legal contract, you can strike for no reason at

all." Explaining the "change in strategy," the Council stated that the 60-day notice was necessary because "it puts the employer in a position where he is likely not to have union employees working for him if he hires non-union men." As late as January 1948, Randolph wrote in the Typographical Journal, "There is one alternative the employer may take which will bring him a non-union operation instead. That alternative is the hiring of non-union men—. Since members of the ITU have never worked with non-union men, they would naturally and unanimously refuse individually to do so."

Nor were these expressions confined to official ITU releases. Thus, at Chicago, Randolph made clear to the publishers that the Union had no intention to give up its "right" not work with non-union men, that if that right were invaded it would strike, not openly to compel compliance, but ostensibly for higher wages. Much the same thing was expressed by Randolph in the Detroit negotiations. Warnings that union men would not work with non-union men were also made at other local negotiations, such as at New Bedford. That these were not idle threats, and that an invasion of the traditional closed shop conditions would lead to an ITU authorized walk-out is illustrated by the Columbus, Georgia, strike which directly resulted from the posting by the publisher of new rules removing from the foremen exclusive hiring power, and cutting down the Union's control of hiring procedures fundamental to traditional ITU closed-shop operations.

An incident of ITU closed-shop operations has been the requirement that foremen of ITU organized offices be union members, who, as such, are obligated by oath and ITU laws to carry out and comply with ITU laws, including the hiring of union men. The ITU, as Randolph's testimony reflects, draws no distinction between "union men" and "union foremen." Hence it is evident that the ITU program to maintain the "right to work only with union men" included foremen within the definition of 'union men." This was made abundantly clear by the "Conditions of Employment" form, which, in addition to providing that members were to work under ITU laws, expressly provided that members would work only under the direction and supervision of a union foreman who was to have complete control over hiring and discharge.

The technique to maintain closed-shop conditions, devised by Respondents and applied with substantial uniformity on a local level, was, as to the employers, essentially a coercive one. By refraining from entering into contracts, a local placed itself in a position where its members could leave their jobs, ostensibly as individuals but actually in a body, whenever conditions in an office became unsatisfactory. And since it was an openly avowed objective of the ITU program to maintain the right not to work with non-union men, the employer would be on notice that in the eyes of his employees, the hiring of non-union men, would result in the establishment of unsatisfactory conditions. Moreover if the Union determined to declare a "lockout," the absence of a contract would leave the Union free to formulate the strike issue as one involving wages or some other legitimate strike objective. The alternatives to an employer were thus clearly presented. Either he must avoid hiring non-union men, or he must face the difficult and disturbing prospect of finding a full complement of non-union men to replace the union men who would "naturally and unanimously refuse individually" to work. Under the ITU program, an employer was not asked to agree not to hire non-union men. It was expected, however, that the publisher, without appearing to violate the law, would manage to evade hiring non-union men. As Randolph said at Chicago, he would leave the method to the publishers' own ingenuity, and he would gamble they would find a way out where their money was involved.

The "Conditions of Employment" form was designed as a substitute for a bilateral and binding contract, in order to give the Union freedom of movement to enforce the conditions it was seeking to maintain. It is inaccurate to say that the "Conditions" were "imposed" upon employers, if by that is meant that employers were forced to submit to a posting of the "Conditions" form and the acceptance of terms unilaterally promulgated by the Union. The record shows that the Locals were prepared to, and did, negotiate with respect to wages, economic conditions and certain other provisions in the form; that the use of a posted form was not always insisted upon, and that the "Conditions" form as a rule was not posted until after agreement was reached on all issues, and often not even

then. But it was not necessary to the accomplishment of the Union's program that formal "Conditions" be posted. A bare wage agreement without definite term, or a satisfactory understanding on wage rates and other economic conditions served the ITU program as well. What was in effect "imposed" was the requirement that the employer maintain conditions consistent with ITU policy, or else risk the alternative of an unstaffed composing or mail room.

The "change of strategy" and Form P-6A, which were fashioned by the ITU after its program had given rise to a refusal to bargain charge at Baltimore, did not, as Randolph conceded, represent an abandonment of the ITU convention policy. It is contended that certain specific clauses of P-6A, considered separately and in certain combinations, constitute that form a legally binding agreement to maintain a closed shop.[55] I do not agree. It is clear from the record as a whole that P-6A was not designed as a legally enforceable closed-shop contract, was not represented as such, and was not so understood. But that alone is not determinative of the issue. The character of P-6A is to be tested by looking at it, not in the abstract, but in relation to the over-all ITU policies and objectives of which it admittedly formed part.

So viewed, it appears clear that P-6A did not basically alter the technique devised by the ITU to secure the maintenance of closed-shop conditions. The key to P-6A is to be found in its 60-day cancellation clause. Although on several occasions the ITU authorized other modifications of P-6A, this was the one clause to which local unions were rigorously enjoined to adhere, and the ITU authorized no deviation from it in the newspaper field until March 1948.[56] The coercive purpose of the 60-day clause was immediately revealed in the ITU communication explaining the "change of strategy," where it was stated that the clause was "absolutely essential" because, inter alia, "it puts the employer in position where he is likely not to have union employees working for him if he hires non-

[55] The clauses claimed by the General Counsel to be violative of 8 (b) (2) for the reason mentioned are (a) (b) (c) (d) and (e).

[56] As found above, it was not until after Judge Swygert had issued his injunction decree on March 27, 1948, that the ITU for the first time circulated general instructions authorizing contracts for a definite term.

union men; . . ." The same communication also set at rest any notion that the ITU was departing from the original objectives of its "Policy," by stressing that P-6A represented merely a change in tactics to meet the charge that the Union was refusing to bargain. It remained the intention of the ITU, the release stated, "to preserve the right of our members individually or, as far as we can collectively, to refuse to work with competing non-union men." With regard to the execution of the ITU "Policy," the only difference between P-6A and no contract at all was that under P-6A reprisal action against an employer for hiring non-union men might have to be postponed for 60 days. As Randolph told the Chicago publishers, the Union was willing to take a chance against the invasion of its "rights" for that period, but no more, "if we strike then, we can make our price higher." In short, P-6A, like the "Conditions" form, was designed to operate as a continuing threat to employers that union men would walk out if non-union men were hired. As William Mapel of the New York City Publishers Association, explaining his objection to the 60-day cancellation clause, testified:

> Our chief objection to it was the suspicion and conviction that we had that no matter what we might write into a contract, if we had a sixty day cancellation clause in there and if we did not close our eyes to the law, if we did not, in a sense, connive to avoid the law or break it; if we did not in every respect, in effect, live up to the Randolph pattern with respect to closed shop conditions, struck work, and union jurisdiction, that we would be served with the sixty-day cancellation clause. In other words we knew it was a sword that would be hung over our head, and we were confident that it would be used against us if we did not connive with those who sought to connive with us in order that the law would be by passed or broken.

On the entire record, I am satisfied that Respondent's course of conduct constituted an attempt within the meaning of 8 (b) (2) to cause employees to discriminate against employees in violation of Section 8 (a) (3). Section 8 (a) (3) makes it an unfair labor practice for an employer to discriminate "in regard to hire or tenure of employment * * * to discourage or encourage membership in

any labor organization." The term "employee" as used in the Act is a broad one covering not only employees of a particular employee, but prospective employees as well. Phelps Dodge Corporation *v.* N. L. R. B., 313 U. S. 177; Matter of Briggs Mfg. Co., 75 N. L. R. B., No. 65. Realistically viewed, it appears obvious that the application of closed shop hiring practices, especially where generally known to exist, as they must be where ITU hiring procedures are followed, operates in a discriminatory manner against all prospective non-union applicants for employment. Where an employment office —to point up the illustration—bears at its entrance a placard reading, "Only union applicants need apply," non-union job seekers are discriminated against as a class.

But it is unnecessary here to rest decision on the proposition that the mere existence of closed shop hiring procedures constitutes, without more, a violation of Section 8 (a) (3), a question which the Board has never squarely decided. A violation of 8 (b) (2) does not depend upon a showing that 8 (a) (3) has been actually breached. Nor does it turn upon the presence of proof that any specific individual was the object of discrimination. Section 8 (b) (2) is not so narrowly to be construed as to require a direct link in the chain of attempted causation between the Union pressure and a particular employee to eb affected thereby. The "attempt" to compel discriminatory hiring requirements looks forward to a situation where it may be applied. What the statute proscribes is union action, as such, directed toward discrimination. Where, as here, the illegal attempt itself is established, the statute is violated without regard to whether it fails or succeeds, or whether it operates on a class of employees or on specified individuals.

Respondents urge in justification of their conduct that their motive and intent was to preserve the Union and promote its economic interests. I have no doubt that this is true. But the mere fact that Respondents' object was to benefit the Union in a way which may have been unobjectionable in the absence of a governing law, does not provide legal justification for conduct specifically proscribed by statute. "The law is its own measure of right or wrong, of what it permits or forbids, and the judgment of the courts cannot be set up against it in a supposed accommodation of its policy with the good intention of the

parties, and, it may be, of some good results." Standard Sanitary Manufacturing Company *v.* United States, 266 U. S. 20, 49. Good motives do not nullify unfair labor practices. N. L. R. B. *v.* Newport News Shipbuilding and Drydock Company, 308 U. S. 241, 251.

There is no more substance in the contention that Respondents' program involved basically the recognition of the right of each individual member to refuse to work under conditions which did not suit him. The right of an individual to work or not to work as he pleases cannot, of course, be questoned. But, as has already been observed, what is involved here is not an assertion of individual rights by individuals, but rather the enforcement by Respondent Union, as a labor organization, and by the individual Respondents, as Union officers, of a collective policy having a coercive base and aimed at discrimination.

Nor is it a defense, as Respondents now also urge, that their program was designed as a self-help measure to protect the Union against efforts by an employer to destroy it. In point of fact, this contention is not supported by the record. As revealed by Randolph's own statements, quoted above, the ITU regarded the very act of putting a non-union man in the composing room as in itself a demonstration of an employer's desire to break the Union. And while in certain local negotiations, it was stated that the Union would cooperate with the employer if he were compelled by circumstances beyond his control to hire a non-union man, it was clearly implied, nevertheless, that the employer would be expected to evade hiring non-union workers wherever possible. In point of law, Respondent's contention is equally unsupported. The mere fact that the Union, with good motives, may have desired to guard itself against employer discrimination in a contingent eventuality, does not justify its own immediate illegal conduct in attempting to cause all employers to discriminate against non-union employees as a class. Violation of the Act has never been held justified, where the unfair labor practices have been committed under force of economic pressure. N. L. R. B. *v.* Hudson Motor Co., 128 F. (2d) 528 (C. C. A. 6); N. L. R. B. *v.* Gluch Brewery Company, 144 F (2d) 847 (C. C. A. 8). There is far less basis for justification where the pressure is not immediate but remote and contingent.

Upon the entire record I find that Respondents by their above described course of conduct, from August 22, 1947 to March 27, 1947, attempted to cause employers to discriminate against employees in violation of Section 8 (a) (3) of the Act.

2. Violation of Section 8 (b) (1) (A).

The 1947 ITU program successfully achieved its objective, as the record discloses, in a substantial number of localities where publishers are operating under Conditions of Employment and are maintaining ITU hiring procedures. There can be no doubt that the maintenance of illegal closed shop conditions by an employer has the effect of restraining and coercing applicants for employment into acquiring union membership in order to obtain a job, and of restraining and coercing other employees to retain their union membership in order not to risk forfeiture of their jobs. It is found that Respondents, directly and through subordinate locals, by causing employers to maintain closed-shop conditions, have restrained and coerced employees in the exercise of rights guaranteed in Section 7 of the Act.

3. Violation of Section 8 (b) (1) (B).

The complaint alleges that Respondents, directly and through their subordinate locals, coerced employers in the selection of their representatives for the purpose of collective bargaining or the adjustment of grievances, by insisting, demanding or requiring that employers hire only Union foremen. The record sufficiently establishes that composing room foremen act as representatives of management in the handling of employee grievances. Absent evidence of a purpose to contravene some other provisions of the Act, it is not illegal under Section 8 (b) (1) (B) for a union to press a demand, or for an employer to agree, that foremen shall be members of the union. Insistence upon such a demand becomes illegal only when it is accompanied by threats or other conduct amounting at law to restraint and coercion. In the instant case, Respondents' course of conduct designed, among other things, to preserve the continuance of closed-shop conditions, as found above, was, inherently coercive in character, since it was calculated to, and did, hold over

the heads of employers a continuing threat that if such conditions were not maintained the employees would not work. And, as also found above, the requirement (contained in ITU laws, and specifically provided for in the "Conditions of Employment" form which was referred to in "Policy" itself) that ITU members work only under ITU foremen, constituted an inseparable part of the ITU program and course of conduct aimed at maintaining closed-shop conditions. It is true that the record fails to show that any publisher specifically resisted, or even objected to, the ITU requirement that only Union foremen be hired, while publishers at certain cities, such as Chicago and New York, affirmatively declared their intent to continue hiring only Union foremen. But the test of restraint and coercion under the Act has never been whether the restraint and coercion has succeeded or failed. The test is, rather, whether the conduct itself is such as to tend to restrain and coerce. "Where the act was coercive, as found here, it is not necessary to show that the coercive conduct had its desired or intended effect. The remedy furnished by the Act is available whether coercion succeeds or fails." Elastic Stop Nut Corp. *v.* N. L. R. B., 142 F. (2d) 371, 377 (C. C. A. 8). See also, N. L. R. B. *v.* Englehorn, 134 F. (2d) 553 (C. C. A. 3); N. L. R. B. *v.* Brezner Tanning Co., 141 F. (2d) 62 (C. C. A. 1); N. L. R. B. *v.* Illinois Tool Works, 153 F. (2d) 811 (C. C. A. 7). It is accordingly found that by engaging in the above described course of conduct from August 22, 1947 to March 27, 1948, conduct, designed, in part, to compel employers to continue hiring only union foremen so as to preserve closed-shop conditions, Respondents restrained and coerced employers in the selection of their representatives for the adjustment of grievances.

4. Alleged additional violations of Section 8 (b) (1) (A) and/or Section 8 (b) (2).

(a) Struck work.

It is contended in the General Counsel's brief that clause (g) of P-6A involves an attempt "to cause a violation of Section 8 (b) (4) if certain events occur," and thereby also violates Section 8 (b) (2), "by constituting an attempt to cause employees of other employers to become union members." A similar but more fully elabor-

ated contention is made in the brief of Intervenor Inland, where it is argued that Respondents' insistence upon the "right" to refuse to handle struck, or substandard, work violates both 8 (b) (1) and 8 (b) (2), because it "tend(s) to cause employers to pursue a course of refusing to deal with other employers who hire non-union printers with the consequent tendency to force such non-union printers to acquire ITU membership in order to obtain employment," and, also, because it operates as a "potent factor in forcing employees of these non-union firms into membership in the ITU by causing employers to discriminate against these employees."

It is clear, of course, that struck work provisions are designed to further the economic interests of a union and its members by enlisting the alliance of the employer in restricting competition from non-union produced goods which may tend to lower the economic standards under which union goods are produced. Insofar as the area of non-union competition is so restricted, it undoubtedly tends to encourage non-union employees to acquire union membership in order to protect their own economic interests. But, unless unlawful means are employed, this union objective is not in itself illegal.[57] In this case there is no claim, and no proof, that Respondents engaged in conduct proscribed by Section 8 (b) (4). The mere fact that Respondents might, in the vague future with respect to an indefinite "other employer," engage in such conduct "if certain events occur" does not, until such events actually occur, constitute an unfair labor practice. Nor is it violative of 8 (b) (1) (A) for a labor organization "to cause employers to pursue a course of refusing to deal with other employers who hire non-union printers." It is undisputed that an employer, without violating the Act, may refuse to do business with whomever and for whatever reason he chooses. Although struck work clauses

[57] Cf. Chief Justice Taft's opinion in **American Steel Foundries v. Tri-City Central Trades Council**, 257 U. S. 184, where he stated:

> "They (unions) were organized out of the necessities of the situation . . . . To render this combination at all effective, employees must make their combination extend beyond one shop. It is helpful to have as many as may be in the same trade in the same community united, because in the competition between employers they are bound to be affected by the standard of wages of their trade in the neighborhood. Therefore, they may use all lawful propaganda to enlarge their membership and especially among those whose labor at lower wages will injure their whole guild."

have been commonplace in labor agreements for many years, I am aware of no Board decision that has held it to be interference, restraint and coercion for an employer to confine his business to union (or non-union) firms over whose employees he has no economic control. If it is not restraint and coercion of another's employees for an employer so to confine his business, it is difficult to perceive how it is any more restraint and coercion of employee rights for labor organization to cause an employer to pursue a course of conduct in which he himself may lawfully engage. For an employer to refrain, or for a union to cause him to continue to refrain, as he has in the past, from doing business with non-union firms with whom he has no current contractual relations or business dealings, involves, as to the employees of the non-union firm, no unlawful restraint or coercion within the contemplation of Section 8 (a) (1) or 8 (b) (1) (A). It merely leaves the employees of the "other employers" in the position in which they were.

The contention that Respondents' conduct in this regard was violative of Section 8 (b) (2) rests on no firmer ground. It is based upon assumptions entirely too speculative and too remote. The hypothesis postulates an uncertain future situation in which an unidentified "other employer" may for purposes of economic advantage decide to violate the law by discriminating against non-union employees. It would be scarcely less conjectural and no more sound to argue, for example, that an employer who confines his dealings to non-union shops whose products are cheaper, attempts thereby to cause discrimination against union employees by making it economically advantageous for the other employers to maintain their non-union competitive position. The statutory scheme indicates that Section 8 (b) (2) was designed to cover situations of direct union pressure applied against a particular employer and aimed specifically at a violation of Section 8 (a) (3). The subject of secondary pressures is separately and comprehensively covered in Section 8 (b) (4). That section reflects a Congressional intent to limit its proscription of secondary pressures to activities involving strikes and concerted refusals to work. The contentions in question are found to be without merit.

(b) Picket line clause

It is contended on behalf of the General Counsel that clause (f) of P-6A, providing that no union member shall be required to cross a picket line established by any ITU subordinate union, violated Section 8 (b) (2), "by constituting an attempt to cause employees of other employers to become union members." Just how this would be accomplished, the brief does not say, and it is difficult to imagine. This clause was designed, the record is clear, in order to excuse refusals by members of a Typographical Union or members of a Mailers Union to cross each other's picket line established at the office at which such members were employed. The contention is found to be without merit.

(c) Jurisdiction

It is contended that the ITU insistence upon the right to preserve and define its own work jurisdiction, constitutes (apart from a refusal to bargain, an issue which we do not here consider) an independent violation of Section 8 (b) (1) and 8 (b) (2). The theory is that such insistence constitutes restraint and coercion of the self-organizational rights of other employees and places an employer in a position, if he yields to such pressure, of disregarding the duties to employees imposed upon him by Section 8 (a) (1) and 8 (a) (3).

Clearly, a union has a justifiable economic interest in protecting its work jurisdiction against competition from others, and in safeguarding its members from technological displacement by extending its jurisdictional claim to cover work performed upon newly developed substitute processes. It is only when a union engages in a "jurisdictional strike" within the meaning of Section 8 (b) (4) (D), or when it seeks to force employees unorganized by it into membership into its union, or (where not warranted) into its bargaining unit, that it runs afoul of the Act. Here, there is no claim that the ITU engaged in a strike proscribed by 8 (b) (4) (D). There is no problem of a "jurisdictional dispute" in the traditional sense, since no other union is competing with the ITU for work over which it asserts jurisdiction. And there is no proof that the ITU is seeking to interfere with the self-organiza-

tional rights of non-union employees in other trades, crafts or classes, or that it is attempting to cause employers to discriminate against non-union employees to encourage or discourage membership in any labor organization.

Indeed, so far as this record shows, the question of ITU jurisdiction was not actually involved as an issue in any of the negotiations except at Jamestown and at New York City. At Jamestown, the issue of jurisdiction was provoked by the employer's effort to remove teletype work from the Union's jurisdiction, although the last contract had provided that if new composing room processes were installed, none but union members would be trained thereon. The Union's claim in effect was that employees in its existing unit should alone be permitted to work on the new substitute equipment. There was no attempt to force any non-union employees into the Union or unit in derogation of their rights under Section 7 of the Act; indeed, the Union neither claimed nor desired the non-union employees in their unit. At New York City, the jurisdictional issue concerned the inclusion or exclusion of varitype operators. The New York City Local had in the course of the negotiations tentatively agreed to exclude varityping workers from the unit definition of composing room work; but the ITU, refusing to approve the tentative agreement in that respect, had thereafter instructed the Local to define "composing room work in newspaper composing rooms" as including, in accordance with the ITU General Laws, "operators of machines such as varitypers, the product of which is used in printing." In its instructional letter, the ITU wrote:

> The jurisdictional clause is inadequate in view of the large amount of varityper equipment the New York publishers have installed. It is unlikely they will dispose of this equipment, and it will remain a threat to employment of union members unless the Union holds jurisdiction over these machines.

At New York City, as at Jamestown, there was no intent or attempt to force any non-union employees into the Union or the unit. Only one New York City newspaper employed any varitype operators on a permanent basis. These operators, who were represented by another union and whom the Union did not claim, were engaged in performing promotional work, the product of which did not

go into the printing of the newspaper. There were also employed at that time by a number of New York City publishers a substantial number of varitype operators who had been hired on a temporary basis in anticipation of a possible strike, and who were then being trained to get out the newspapers by the substitute varityping process. But it was generally understood that their services would no longer be required if a contract settlement was effected. It is thus clear that the ITU was not seeking the inclusion of these non-union employees in its unit or union. Its object, rather, was to provide assurance, in the event that varityping equipment was substituted for the present processes in the printing of newspapers, that employees in the ITU unit, who would otherwise be displaced, would be assigned to work on such substitute equipment.

The contention here in question fails for two reasons. First it improperly assumes that a demand at a bargaining meeting for a clause which, if granted, would be in derogation of employee rights under Section 7 of the Act, in itself constitutes restraint and coercion. Secondly it asks the Board to decide a hypothetical issue on facts not involved in this case. On the basis of the facts in the present record, I am unable to conclude that any violation of 8 (b) (1) (A) or 8 (b) (2) arising from the ITU position on jurisdiction has actually occurred. That the ITU jurisdictional policy, if enforced under conditions not now shown to exist, may conceivably lead at some indefinite future date to a violation of the Act is a matter to be dealt with when, and if, such a situation should arise.

(d) Post injunction conduct; competency and foremen clauses

It is contended that after the issuance of Judge Swygert's injunction decree on March 27, 1948; Respondents, by generally instructing subordinate unions to incorporate competency clauses in their contracts, continued their attempt to cause publishers to violate Section 8 (a) (3).

This phase of the case was developed solely in conjunction with the New York negotiations, reported in subsection D (13) above. There is no other evidence in this record to indicate how the ITU general instructions were actually applied. It will be recalled that after the decree, the New York Local submitted a new proposal which in-

cluded in substance, the ITU recommended competency clause. In the negotiations which followed, there was substituted for this clause the so-called "seniority rules" previously proposed by the publishers. Thereafter, the ITU objected to the substituted clause for reasons set out in subsection D (13), and, without suggesting reversion to the particular competency clause contained in its general instructions, advised the New York Local of the alterations necessary for ITU approval.[58] Except for one short subsequent meeting, obviously designed to lay the ground work for ITU intervention, no further meeting was held up to the time of the hearing, at which the competency clause was discussed. The contention of the General Counsel is necessarily based upon the untested assumption that the ITU in future bargaining meetings would not have deviated from the last position expressed by it; that it would not, for example, have agreed to spell out in detail the competency procedures and standards which were to guide the Joint Examining Board; and that it would have conditioned its approval of any contract settlement upon the publishers' acceptance of a clause substantially identical to the one last proposed by it.

The only discrimination forbidden by the Act is that which encourages or discourages membership in a labor organization. The Act does not make it illegal to accord preference or to limit employment on the basis of previous experience, ability, or prior employment with a particular employer or in the industry. A union, particularly a craft union, in order to protect its working standards, has a

[58] The recommended alterations are indicated below—bracketed matter representing deletions from the publishers' clause and underscored matter representing additions:

In hiring new journeymen employees the foreman must recognize priority as follows:

First: Regular situation holders.

Second: Subject to established hiring practices in departmental offices, other journeymen who have worked in the composing room.

[Third: Journeymen with experience in other composing rooms in Greater New York.]

Fourth: Journeymen concerning whose competency the foreman has no reason for doubt or journeymen who have registered for employment after having had their competency tested and certified by [qualified and impartial examiners named by the New York City Board of Education] the Joint Examining Board under procedures established by the School for Printers' Apprentices of New York City. Foremen may not exclude as candidates for employment any individuals who establish competency.

legitimate interest in seeing to it that only qualified craftsmen are allowed to work in its trade. Thus the fact that Respondents requested, or even insisted upon, competency clauses does not constitute per se a violation of Section 8 (b) (2) of the Act. A conclusion of illegality can be reached if, but only if, the record can be said to support a finding either (1) that the ITU attempted to impose upon the publishers competency clauses illegally discriminatory upon their face, or (2) that it was the Respondents' purpose and design to interpret and apply the competency standards—although not illegal upon their face—in such a manner as to cause employers to violate Section 8 (a) (3). In my opinion the record of this particular case, possibly because the matter was prematurely litigated, is insufficient to support either of these findings.

A joint arrangement for testing competency of new employees is not on its face discriminatory within the meaning of Section 8 (a) (3). If jointly with the employer, the Union has an interest in seeing to it that only qualified journeymen are permitted to work, it is not illegal for it, in order to protect that interest, to demand an equal voice in the determination of competency. True, this would in effect confer upon the Union a veto power over applicants. But, as a matter of law, it cannot be assumed in the case of a union, any more than in the case of an employer, that because it is placed in a position where it may do so, it will in fact discriminate—that is, until the contrary is shown. The only extrinsic proof relied upon by the General Counsel to establish that the competency clauses were in fact designed to exclude non-union members consisted of (a) the ITU letter to the New York Local, referred to in D-13 above, explaining its objections to the competency clause contained in the tentatively agreed upon New York contract, and (b) Respondents' course of conduct prior to the injunction. The statements relied upon in the ITU letter to support a finding of discriminatory purpose are, at best, equivocal. The fact that the ITU insisted upon a voice in selecting examiners and in establishing standards does not necessarily evince a purpose and intent to maintain in effect closed-shop conditions; it is at least equally consistent with an inference that the ITU desired to provide assurance that the competency standards to be applied would be the same or similar to

those which it required for journeymen membership. It is true that the ITU illegal course of conduct prior to the injunction may provide some room for suspicion that its change of policy thereafter might be a subterfuge aimed at the same illegal objections. But, in view of the intervening injunction, this is not lightly to be presumed in the absence of an independent showing. A finding of unfair labor practices cannot be supported upon suspicion alone. The fact that the ITU acted illegally in the past does not place it in the position of an outlaw forbidden to pursue otherwise legitimate objectives because doubt has been cast upon the bona fides of all its future conduct.

The principal difficulty with the General Counsel's approach to this aspect of the case as I have tried to indicate, is that the Board is being asked to decide, in vacuo, an important issue on the basis of only a partially developed record. The fact that the competency clauses, if agreed to in the precise form requested, might conceivably at some future date be illegally interpreted and applied to cause a violation of Section 8 (a) (3), does not support a finding of a present violation. If and when the Respondents' conduct should unequivocally disclose that competency clauses are to be utilized to maintain closed-shop conditions, or otherwise to cause an employer to violate Section 8 (a) (3), then will be time enough for the Board to intervene. The protection of the statute will not in the meantime be suspended, and the recommended order below, based upon the Respondents' proved violation of Section 8 (b) (2), will, in any event, be broad enough to cover that situation.

The general instructions which the ITU issued to its locals after the injunction also contained a proposed clause which would require that all composing room foremen be Union members and that composing room employees be "employed, receive orders from, laid off and discharged by the foreman and by none other." A contractual undertaking that foremen be members of a union is not contrary to law unless the employer is restrained or coerced into agreeing to it. Normally, it is not to be inferred in the absence of other proof that the employment of union foremen operates, without more, to establish closed shop or preferential hiring conditions in violation of Section 8 (a) (3). Where, as here, it appears that

the union foremen are bound by oath to "use all honorable means to procure employment for members * * * in preference to others,"[59] a showing that a union required, as a condition to a contract settlement, that only its foremen members be permitted to hire may be evidence—although not necessarily conclusive—[60] of an attempt, illegal under Section 8 (b) (2), to cause an employer to discriminate against non-union men in hiring. Such a showing is, however, lacking in this case. At New York City, the only locality at which injunction conduct was reviewed at the hearing, the record discloses that the formal proposal made by the New York Local omitted the foreman clause referred to above. Although a foreman clause in a modified form (to which the ITU did not object) did appear in the New York contract which was thereafter tentatively agreed upon, the record does not disclose under what circumstances or at whose instance it was inserted.[61] On this record, it cannot be concluded, therefore, that Respondents during the post-injunction period engaged in an actual violation of Section 8 (b) (2).

(e) Refusal to bargain

The complaint alleges that Respondents, by refusing to bargain with companies where the ITU was collective bargaining representative, and by causing local unions to refuse to bargain with companies where the locals were such representatives, violated Section 8 (b) (1) (A). The complaint does not allege a violation of Section 8 (b) (3) which expressly makes it an unfair labor practice for a bargaining representative to refuse to bargain collectively

[59] Although Randolph testified at one point that since the passage of the amended Act, he considered ITU foremen no longer bound in this respect, he admitted that no notice was given to members that they were no longer obliged to carry out or fulfill that oath.

[60] As has been noted, certain ITU approved agreements contain clauses providing that a foreman shall not be subject to disciplinary action by the Union for any act in the performance of his duties as foreman.

[61] As modified, the foreman clause did not specifically require that foremen alone should have authority to hire, but provided that 'the operation, authority, and control of each composing room shall be vested exclusively in the office through its representative, the foreman, who shall be a member of the Union." The same clause set forth the priority rules which "the foreman must recognize" in hiring, and provided that "foremen may not exclude as candidates for employment any individuals who establish competency."

with an employer. Thus, at the very threshold of this issue, the question arises whether a refusal to bargain, under the circumstances of this case, constitutes restraint and coercion of employee rights.[62]

The General Counsel's argument is rooted in two theories. He contends, first, that since an employer's refusal to bargain has tradftionally been regarded as a violation of Section 8 (a) (1), a union's refusal to bargain must be regarded, by analogy, as a violation of Section 8 (b) (1). He contends, secondly, that Respondents, by enforcing the ITU "collective bargaining policy," and by otherwise so exercising their control over subordinate unions as to cause them to fail to bargain in good faith, coerced the local bargaining agents and through them the employees in the local bargaining units in their right to bargain collectively through representatives of their own choosing.

Because Section 8 (b) (1) was designed as the co-part of Section 8 (a) (1), it does not follow that each and every rule established by the Board in cases involving employer interference, restraint and coercion must mechanically be transposed to cases involving union restraint and coercion, with every i dotted and every t crossed and without regard to whether or not the controlling principles are the same. The principle underlying the Board's practice of finding a violation of 8 (a) (1) wherever it finds a violation of 8 (a) (5) is based upon obvious grounds. Where employees have exercised their right to bargain through a representative chosen by them, and that choice has not been revoked, an employer's refusal to recognize or to bargain in good faith with that representative, thwarts the representative's efforts to carry out the delegated will of the employees, and thereby interferes with and restrains the employees in their right, granted

[62] Section 8 (b) (1) (A) reads:

It shall be an unfair labor practice for a labor organization or its agents—(1) to restrain or coerce (A) employees in the exercise of rights guaranteed in Section 7: **Provided**, that this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein;—

The pertinent language in Section 7 is:

Employees shall have the right to . . . bargain collectively through representatives of their own choosing . . . and shall also have the right to refrain from any and all such activities . . . .

in Section 7, collectively to bargain through a representative of their selection. But the same principle does not apply where a labor organization, acting with the employees' prior consent, express or implied, engages in a course of conduct amounting in law to a failure to bargain with an employer. True, such a refusal would be a violation of Section 8 (b) (3), just as an employer's refusal to bargain would be a violation of Section 8 (a) (5). But because another statutory obligation has been breached does not ipso jure establish that employee rights guaranteed by Section 7 have been invaded. Section 7, unlike Section 8 (b) (3), itslf creates no duties and compels no action. It is rather a grant of certain rights which employees are free to exercise or not, as they choose. As has been said, rights are not rights if one is required to assert them. If, then, employees freely exercise the right also guaranteed them by Section 7, to refrain from bargaining, or, if in accordance with their expressed or implied direction, their designated representative bargains for them in such a manner as to amount in legal effect to a refusal to bargain, it is difficult to perceive how the employees' "right to bargain collectively through representatives of their own choosing" has been infringed. Obviously, if the bargaining agent is carrying out the will and desires of the employees whom it represents, it is not restraining and coercing them whether, it is bargaining within the statutory meaning or not. In the instant case, the record shows that the 1947 ITU covention policy, upon which the claim of refusal to bargain is principally predicated, was unanimously adopted by delegates democratically chosen by the members of all the subordinate locals. To hold under these circumstances, that Respondents, by carrying out the mandate of the membership have restrained or coerced ITU members, is to hold that agents restrain and coerce their principals in carrying out their principals' orders. It was stipulated that all employees involved in this case were union members. Thus the question of coercion of non-union members cannot possibly arise, even if could be paid that an employee who has chosen not to bargain through a designated representative suffers an infringement of his rights if the representative refuses to bargain. The argument that rights of minority members who may not have ac-

quiesced in the ITU policy were impaired by a refusal to bargain is not a compelling one. Such an argument strikes at the doctrine of majority rule which is basic to labor and other organizations.[63]

The argument that the International coerced the local bargaining agents by causing them to refuse to bargain rests on no firmer ground. An International does not exist separate and apart from its locals and their membership, with mutually antagonistic interests. It is the aggregate of it locals and their membership who by their act of continued affiliation consent to be bound by International policy and rules, to the extent that the right to make such policy and rules has been delegated by them to the parent organization. Where, as here, an International acts within the scope of its duly delegated authority, and in accordance with the majority will, it cannot be said to restrain and coerce its locals or their membership by requiring compliance with its internal laws.

A consideration of the amended Act and its legislative history supports the view that Section 8 (b) (1) (A) was not designed to include within its definition of restraint and coercion a union's efforts to control its locals and its members by enforcing adherence to its policies and rules. This not only is self evident from the proviso to Section 8 (b) (1) (A), but is supported by legislative history as well. When the Holland amendment which became the proviso to Section 8 (b) (1) (A) was proposed, Senator Ball stated, "It was never the intention of the sponsors of the pending amendment to interfere with the internal affairs or organization of labor union. The amendment of the Senator from Florida makes that perfectly clear." (93 Cong. Rec. 4400) Later, in discussing the same amendment, he said, "That modification is designed to make it clear that we are not trying to interfere with the internal affairs of a union which is already organized. All we are trying to cover is the coercive and restraining

[63] An exclusive bargaining agent may not, of course, discriminate against a minority group in the unit. But it is not claimed in this case that the Respondents failed to represent all employees equally and without discrimination. Hence, **Steel v. Louisville and Nashville R. R. Co., et al.**, 323 U. S. 192 and **Tunstall v. Brotherhood of Locomotive Firemen**, 323 U. S. 210, relied upon in the General Counsel's brief, are inapposite.

acts of the union in its efforts to organize unorganized employees.[64] (93 Cong. Rec. 4559)

To accept the contention that the Respondents restrained and coerced its locals, and through them employees, by causing the locals to insist upon certain contract clauses and thereby to refuse to bargain, would be in effect to write into the Board's decisional law the Ball amendment which the Senate, after full deliberation, rejected.[65] (93 Cong. Rec. 4568, 4804) An expressed purpose of that amendment was to make it illegal for an international to require or coerce a local union to include or omit particular contract terms, or to sign or not to sign a proposed collective bargaining agreement (S. Rep. 105, 80th Cong. 1st Sess., pp. 50-52). It was designed, in the words of Senator Taft, a sponsor of the amendment, "to stop the arbitrary power of the international union to make local unions stop bargaining collectively with their employers." (93 Cong. Rec. 4714) The legislative history discloses that it was intended to reach, inter alia, certain specific ITU practices claimed in this proceeding to fall within the refusal to bargain allegations of the complaint.[66] It also discloses that the supporters

[64] Reliance is placed in the briefs of the General Counsel and the intervenor, Southern, upon a statement of Senator Taft indicating that 8(b)(1)(A) was intended to reach labor union leaders exercising arbitrary powers. That statement was made before the introduction of the Holland amendment which was introduced to assuage the fears of opponents that it would interfere with the internal affairs of labor unions. Later statements of Senator Taft, made after the introduction of the Holland amendment, fail to indicate that it remained his intent to extend 8(a)(1)(A) to intra-union activities. (See e. g., 93 Cong. Rec. 4561, 4562)

[65] Senator Ball proposed an amendment, popularly referred to as an industry-wide bargaining ban, which inter alia, made it an unfair labor practice for an international union:

> To coerce or compel or attempt to coerce or compel (irrespective of whether or not such coercion or compulsion is authorized by any provision in its constitution or bylaws) a labor organization, or any other labor organization, which acts as the representative of employees for collective bargaining purposes, to include or omit or to seek the inclusion in or omission from any collective bargaining agreement of any particular term or provisions relating to wages, hours of work, or other conditions of employment.

[66] Thus, in the course of the debate, Senator Ball referred specifically to an ITU convention resolution requiring all locals to insert in their contracts a clause that employers and employees would conform to ITU laws "past, present ,and future." He pointed out that under his amendment, "the International could not threaten a local with any kind of retaliatory action if the local said it would not go along and insist that its particular employer would have to accept such a contract provision." (93 Cong. Rec. 4571)

of the amendment were persuaded that none of the other provisions of the bill (including presumably what is now Section 8 (b) (1) (A) of the Act) were sufficient to reach an international's activity in causing a local, through the enforcement of International laws, to fail to bargain.[67] The defeat of that amendment would appear, alone, dispositive of the question of Congressional intent on this point.

In view of my conclusion that a refusal by the Respondent to bargain, or activity by the Respondents causing locals not to bargain, could not, in any event, be found violative of Section 8 (b) (1) (A), I do not reach, and need not decide, the question of whether the particular conduct complained of would have sufficiently established a refusal to bargain had a Section 8 (b) (3) violation been charged.[68]

(f) Slow-downs

The complaint alleges that Respondents violated Section 8 (b) (1) (A), by engaging in and causing subordinate unions to engage in slow-downs "in support of, or as part of, the other unfair labor practices" herein alleged. Unlike the other unfair labor practices alleged to have been engaged in by ITU locals at the instigation of its parent, there is no showing that slow-downs were part of a general pattern. The relationship between ITU locals and publishers at twelve separate localities were fully

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[67] This is reflected by the following exchange between Senators Ellender and Taft (93 Cong. Rec. 4709):

> Mr. Ellender: Is it not a fact that because of such a provision [8 (b) (3)] in the bill which we are now considering, it will in a measure ameliorate the difficulties which have occurred in the past and which have resulted from industry-wide bargaining.
>
> Mr. Taft: I think it will ameliorate them; yes. I agree with the Senator.
>
> I do not think, however, that it goes to the basic point. I do not think anything else in the bill will nullify the provisions which give the international through certification or through its own constitution, the right to control the welfare of and the final contracts made by hundreds of locals throughout the country. (Emphasis supplied.)

[68] That question, however, to the extent framed by the pleadings therein, will be considered in my report on the companion case, Matter of Chicago Typographical Union No. 16 and International Typographical Union, Case No. 13-CB-6, where a Section 8 (b) (3) violation is alleged against the International as well as the Local.

explored at the hearing, but at only two of them—Chicago and Detroit—did the evidence develop the occurrence of slow-downs. On evidence in this case, I am not persuaded that the General Counsel has sufficiently sustained the burden imposed upon him of proving by substantial evidence that the Respondent International or the individual Respondents were responsible for the occurrence of slow-downs at either of these cities—either upon the basis of conventional agency principles or upon the somewhat dubious theory, upon which he mainly relies, of causation principles applicable to tort law. The record as a whole does not support the conclusion that slow-downs were either planned or contemplated as part of the ITU 1947 convention program. While it is no doubt true that the slow-downs at Chicago and Detroit might not have happened had the ITU program not given rise to a chain of circumstances leading to their occurrence, the fact remains that at both these cities the slow-downs were directly due to a superseding cause—the refusal of the publishers (whether justified or not is immaterial) to grant or even to discuss with the Local's wage increases upon expiration of the old contracts. The slow-downs had no discernible objective other than to compel the publishers to meet the local's wage demands. Their purpose could not have been to impose closed-shop conditions or to force the publishers to agree to a closed-shop contract; for closed-shop conditions prevailed at the time and the local's preferable objective was to work without any contract at all. Hence, it is difficult to perceive how the slow-downs may be found to be "in support of, or as part of, the other unfair labor practices" established by the record of this case.

Slow-downs, to be sure, do not constitute a form of concerted activity protected by the Act, and they are to be deplored as a pressure technique under any circumstances, but except where they are utilized as a means to an objective forbidden by the Act, they do not, standing alone, any more than strikes for legitimate objectives, constitute unfair labor practices within the meaning of the Act. For all these reasons, I conclude that the allegation here in question has not been proved, and shall accordingly recommend its dismissal.

F. Reproduction: Alleged violation of Section 8 (b) (6)

1. How reproduction operates

The subject of reproduction, because it is unrelated to the other issues of this case, has been reserved for separate treatment. Reproduction, usually known in the trade as "bogus,"[69] refers to a practice under which newspapers have been required by their contracts with ITU subordinate unions to reproduce certain advertisements after they have already appeared in the newspaper. Provision for reproduction is contained in Article IX, Section 2 of the ITU General Laws, which to the extent here pertinent, provides:

> The interchanging, exchanging, borrowing, lending or buying of matter, either in the form to types or matrices, between job offices, or between newspaper and job offices, or vice versa, not owned by the same individual, firm or corporation, and published in the same establishment, is unlawful, and shall not be allowed unless such type or matrices are reset as nearly like the original as possible, made up, read and corrected and a proof submitted to the chairman of the office * * * The time limit within which borrowed or purchased matter, or matrices are to be reset shall * * * be regulated by agreement between the employers and local unions. * * *

Another section of the "laws" authorizes subordinate unions to exempt from reproduction "national (general) advertisements, plates and plate supplement matter, printed supplements, type, plates and matrices other than local advertisements." Normally reproduction has been confined by agreement to advertisements of concerns that are in the local field.[70]

In actual practice reproduction operates as follows: An advertiser arranges to have transferred to a newspaper advertising matter in the form of a matrix[71] prepared in

[69] And in one locality, at least, as 'deadhorse.'

[70] At one Chicago newspaper, about 10 percent of the local advertisements are reproduced; at the Rochester newspapers the figure is 3 percent. These are the only figures in the record, disclosing the percentage of advertisements reproduced.

[71] This is the most usual form of transfer. The matter may, however, be in type or plate form.

the composing room of another local newspaper,[72] or in a local specialty printing shop. The newspaper receives the matrix, charging the advertiser the same rate it would charge were it required to prepare the advertisement originally from copy.[73] After a plate is made from the matrix and the advertisement is run off on the presses, a tear sheet of the advertisement is taken from the proof or from the published newspaper, and placed on the "bogus hook" to be reproduced. Thereafter, within the time limit fixed for reproduction, if men are available to perform the work within that period, the tear sheet is sent to a hand compositor who reproduces the advertisement as nearly like the original as possible. The type form is then put through the usual machine operations, a proof is made, and the proof is read and corrected, all in precisely the same manner as if an original advertisement were involved. The reproduced matter, once set, becomes the property of the publisher. Usually the publisher has no use for it, and it is immediately destroyed. On rare occasions the reproduced matter may be picked up and used for advertisements that are re-run. When bogus matter is reproduced, however, there is no intent that it will be put to use.

Bogus work is not confined to any separate group of individuals; it is performed at various time (but never on a full-time basis) by all printers in the composing room.[74] Most, but not all, newspapers operate in peaks and valleys; certain periods of the day and certain days of the week are busier than others. Live matter is always given priority in the composing room. Wherever possible, an effort is made to have bogus work performed during the lull periods of the day or week, or, if there is an accumulated backlog of bogus, during the slower seasons of the year. In recent years, when printers have been in short supply, overtime work has been common, and dead periods often non-existent in some localities, it has

[72] It is the custom in the industry for newspapers to supply matrices to advertisers on request, free of charge or for a nominal fee.

[73] Newspapers charge for space, not labor. The practice of charging the same rate, whether or not a matrix is submitted, applies as well in the case of national advertisements which are not reproduced.

[74] In large metropolitan areas, such as New York City, where work is departmentalized this work is given only to employees on the "ad side" of the composing room.

not always been possible, with the use of regular situation holders, to clean up bogus work within the time limit fixed by the contract. Under such circumstances the bogus remains "on the hook" until men are available to reproduce the matter. It is usually provided in contracts that no matter shall be reproduced at overtime rates. But if bogus accumulates beyond the limited period, a foreman cannot refuse to hire extras, if any are available on the slipboard.[75]

2. History and economic aspects of reproduction

Reproduction dates back in its origin some 75 years. Prior to the introduction of the linotype machine in 1890, printers were paid on a unit basis. About 1872, the printers began to resist the practice followed by some employers of borrowing locked type forms set in other offices, upon the ground that this practice deprived them of work and pay which they otherwise would have received. Beginning about 1872, the ITU at its annual convention passed resolutions discountenancing the practice of borrowing type. Subsequent conventions adopted similar resolutions, and in time—the record does not disclose just when—this was incorporated in the "laws" of the ITU. With the subsequent introduction of the linotype process, and the use of matrices, the ITU continued to take the position that the injection of composition, in a newspaper free of charge, violated the principle that a union supplied men to get out all the work of a publisher. But, instead of flatly prohibiting the interchange of matrices, it was required that matrices, locally interchanged, be reproduced. Reproduction clauses have appeared in contracts since before the turn of the century.[76]

When the reproduction rule was first introduced, local advertisements were prepared almost exclusively at newspaper composing rooms, and the exchange of matter was almost invariably between local newspapers. There is evidence that some newspapers in the early years of reproduction not only failed to resist, but even en-

[75] The extras who are hired would not necessarily be assigned to reproduction work.

[76] Thus, at Chicago, a reproduction clause has been in the contracts since 1897.

couraged the inclusion of reproduction clauses, on the theory that advertisers tended to have their advertisements set in the composing room of that local newspaper which had the best type and facilities, and, without such a rule, other newspapers obtaining matter at little or no cost would receive an unfair competitive advantage. That may explain why the Union failed to obtain clauses extending reproduction to national advertisements, which are supplied by advertising agencies, although the principle involved is, from the Union's point of view, the same. In more modern times advertisers have with increasing frequency followed the practice of sending different copy to different papers, and the practice has also been greatly extended of having advertisements set in commercial shops. As a result the transfer of matter between newspapers has diminished, and most bogus work arises now from advertisements set originally in commercial shops.[77]

Reproduction, although an old bone of contention between some publishers and the Union, is apparently not regarded by most of them as a sufficient reason for engaging in a contract dispute, possibly because they have adjusted themselves to the practice over the many years it has been in existence,[78] possibly because they have felt it would be futile to attempt to change that practice. The evidence reflects that publishers generally have looked on the reproduction rule as simply one matter to be traded off in collective bargaining against other items of wages and hours. Thus Randolph testified without contradiction that in negotiations in Chicago in 1923, the publishers insisted upon the elimination of reproduction, and offered to submit a proposal to eliminate reproduction and to provide instead for a compensating reduction of hours. Randolph, then a negotiator for the Chicago Local and not ITU president, agreed to submit such a proposal to the Union. Several days later, however, he was advised that the publishers had decided not to make such a proposal and to withdraw their objections to reproduction.

[77] In Chicago, the contracts prior to 1945 had not required reproduction of matter received from commercial shops. During that year, however, the Local demanded in negotiations that the clause be extended to such work, and the publishers finally agreed to this bargaining demand made to bring the contract in compliance with ITU law.

[78] Thus at Chicago, the record indicates that publishers have never sought the elimination of reproduction in many years of negotiation.

Worth C. Coutney, business manager of the Chicago Herald-American, testified that reproduction was among the items considered and discussed in arriving at the whole agreement, and that he would say that payment for reproduction was part of the compensation which printers received because of the services they performed for the publishers. C. E. Woodard, production manager of Knight Newspapers testified that if reproduction were eliminated, its cost could be spread among employees. Charles E. Lane, of the New York Times, testified that in the recent New York negotiations, the publishers, in asking for the elimination of reproduction, suggested their readiness to make a greater money offer in return.

The publishers take the position that reproduction is a wasteful and costly practice, creates extra work, is of no benefit whatsoever to them, and at times requires the employment of extra printers who might otherwise not be necessary. The records submitted by them reflect, and it is found, that if reproduction were eliminated, they would be able to reduce their regular employee complement in the composing room from about 2 to 5 percent, and effect an equivalent reduction in composing room costs.[79]

The ITU, on the other hand, by way of economic justification for the reproduction practice, urges that it tends to stabilize employment by providing work during the slack days of the week; that it is unfair to expect the Union to supply on busy days employees who may be without work on slower days; that it is to the employer's advantage to have always available a sufficient number of printers to take care of busy periods; that employees are entitled to produce the newspaper they are working on; that it prevents unfair competition among publishers resulting from advertisers having their work performed at the newspaper having the best facilities and supplying a matrix free of charge to a competing newspaper; and, finally, that the elimination of the rule might encourage publishers to establish joint composing rooms to do "ad" work thereby eliminating a substantial number of printers.[80] In answer, the publishers assert that if reproduc-

[79] The cost of setting bogus at the Chicago Herald-American amounts to approximately $50,000 a year; at the Rochester Democrat & Chronicle to over $5,000 a year; at the New York Times, to about $150,000 a year.

[80] These are the reasons given by Randolph at the hearing.

tion were eliminated, "ad" work could be rescheduled so as to eliminate lull periods; that present schedules take into consideration that bogus work must be done; and that, in any event, with printers now in short supply in many localities and working at overtime rates, there are no lull periods, and certainly no need to spread employment. To the last argument the Union rejoins that periods of manpower surplus may return.

3. How the issue arises

Since August 22, 1947, so far as the record shows, opposition to the reproduction practice was expressed by newspaper publishers in only three localities.

At Columbus, Georgia, there is no evidence that the publisher voiced any objection with regard to reproduction between August 15, 1947, when negotiations began, until February 8, 1948, when the publisher submitted a counterproposal providing, inter alia, for its elimination.[81] The Union rejected this counterproposal principally on other grounds; and the reproduction feature was scarcely discussed, if at all. When the Union went out on an ITU authorized strike shortly thereafter, the elimination of reproduction was not, as the record reflects and as the General Counsel agreed, an issue in the strike, nor in the Union's decision to strike.

At New York City, the publisher first formally requested the elimination of reproduction at the 13th bargaining meeting on April 2, 1948, although the subject had been incidentally mentioned before. The publishers stated that they wished to eliminate bogus because they felt it was in violation of the Taft-Hartley Act and a wasteful and unnecessary practice besides. The Local disagreed that it was violative of the law, argued the need of reproduction to help it spread the work, stated that it was part of the ITU laws, and expressed the view that Local members felt strongly about bogus and that a contract calling for its elimination would not be approved by the Local membership. The publishers countered the Local's argument, by pointing out that the 4-day limit in the old contract did not spread work much, and expressed the view

[81] The facts concerning the Columbus, Georgia, situation are more fully discussed in Section D-10 of this report.

that other forces could be set up to accomplish the same result. In the course of discussions, the publishers suggested a greater money offer to compensate for loss of reproduction, but the Local declined to trade off reproduction on that basis. After discussions proceeded along these lines for some days, the publishers and the Local negotiating committee finally reached a meeting of the minds to retain reproduction but to extend the time limit within which matter was to be reproduced from 4 to 7 days. Neither the Respondent Union nor the individual Respondents participated in the reproduction discussions at New York City.

At Rochester, New York, the publishers of the two newspapers in that city made no request in the most recent negotiations to eliminate reproduction entirely, although he had unsuccessfully made such a request in previous years. The publisher simply proposed a revision of the bogus clause so as to provide that if insufficient men were available to get out reproduction within the time limits fixed by the agreement, reproduction of such matter should not be required.[82] The Local rejected this proposal, on precisely what grounds the record does not show; nor does it show the final outcome of the negotiations at Rochester, which were still proceeding at the time of the hearing.

At other cities covered by evidence in this case, no issue at all was raised concerning bogus in the negotiations since August 22, 1947. At a number of them, such as Detroit, Buffalo and Albany, the written counterproposals submitted by the publishers contained reproduction clauses.

It is contended that Respondents' illegal conduct consisted of retaining the General Laws clause providing for reproduction, and of incorporating reproduction provisions in the "Conditions of Employment" form and in Form P-6A. However, there is no evidence in the record to indicate that the reproduction clause in these forms were submitted as ITU mandated "must" clauses not subject to negotiation.[83] Randolph did testify at the hearing

[82] At Rochester, due to a shortage of printers, there was a large accumulation of bogus matter at the time, the backlog dating back several months.

[83] In the negotiations at Buffalo, the Local agreed to revise the reproduction clause in the "Conditions" so as to make it conform with the last contract.

that he would not approve a contract which did not contain a reproduction clause. But since no such proposed contract was submitted to the ITU since August 22, 1947, no occasion actually arose to test the Respondents' position in that regard. On the record of this case it thus remains a matter of speculation as to what action or pressure, if any, the Respondents would have authorized to enforce compliance with its reproduction rule, had the issue arisen.[84]

4. Conclusions

Section 8 (b) (6) provides:

> It shall be an unfair labor practice for a labor organization or its agents—to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or to be performed.

The General Counsel contends that reproduction work cannot be considered "services," since it involves no benefit to an employer, and that the Union's demand for and insistence upon reproduction clauses, as reflected by the ITU laws and the "Conditions" and P-6A forms, must be construed as "in the nature of an exaction," thus rendering the ITU position with regard to reproduction violative of Section 8 (b) (6). He argues further that the practice of reproduction "involving a complete waste as it does, is clearly anti-social and contrary to public policy," and "if there is any ambiguity with respect to the application of Section 8 (b) (6)—It must be construed that Congress intended to prohibit such practices." Respondents, on the other hand, assert that their demand for reproduction clauses is beyond the reach of Section 8 (b) (6). They argue in substance that 8 (b) (6) has a limited application, outlawing only attempts by extortimist means to compel payments to labor organizations or their agents where no work or services at all are to be per-

[84] Significantly, the issue of reproduction was not made an issue in the Columbus, Georgia, strike. As Chicago, upon the expiration of the contract on October 21, 1947, the publishers discontinued reproducing matter. Although operations thereafter continued for a period of a month until the strike, no effort was made to enforce compliance with the reproduction rule.

formed; that the section does not apply to demands by employees, through their union, to secure an additional form of compensation to a group of employees already on the pay roll who perform actual services; and that since reproduction work is performed during regular working hours with the tools made available by the employer and under his direction and supervision, it is irrelevant whether the employer considers them beneficial to himself or not.

There can be little doubt that the setting, proofreading and correction of bogus, which is destined for the waste-basket, is a wasteful practice. But it is not the function of a finder of fact to construe a statute according to his own concepts of what may be anti-social or contrary to the public interest generally. The charge here is that Respondents violated a specific statute. The only public policy involved is that declared in the statute itself, and in the Congressional objectives that gave rise to it. Where, as here, the statute employs words, such as "services" and "exaction," which under varying circumstances may have different meaning, it is appropriate to turn to the legislative history of the statute to determine precisely what Congress intended to cover.[85]

Under the House bill (H. R. 3020), it was made an unlawful concerted activity to call, authorize, engage in, or assist "any strike or other concerted interference with an employer's operations, an object of which is to compel an employer to accede to featherbedding practices." (Sec. 12 (a) (3) (B)) Among the activities defined as featherbedding practices by the House bill (Sec. 2 (17)) were: (a) to employ persons in excess of the number reasonably required to perform actual services; (b) to pay money in lieu of employing such an excess number of persons; (c) to pay more than once for services performed; (d) to pay money for services not performed; and (e) to pay a tax for the privilege of using or operating certain machines or to agree to restrictions upon their use. The Senate bill contained no reference at all to "featherbedding" practices. Section 8 (b) (6) in its present form was written into the Act in conference. The Conference Report states simply that Section 8 (b) (6) "derives

[85] The legislative history on this subject is short, and is here summarized substantially in full.

from the provisions of the House bill relating to featherbedding practices."[86] When the Conference bill was reported to the House, with the House bill's elaborate provisions on "featherbedding" stripped down to its present state, it evoked little comment. Representative Landis noted merely that the bill made it an unfair labor practice "for a union to try to compel an employer to pay its members for services not performed." (93 Cong. Rec. A. 28284) It was during the Senate debate on the Conference bill that the clarification of 8 (b) (6) took place.

In presenting this section of the Conference bill, Senator Taft stated in part (93 Cong. Rec. 6598):

> The House had rather elaborate provisions prohibiting so-called featherbedding practices and making them unlawful labor practices. The Senate conferees, while not approving of featherbedding practices, felt it was impracticable to give a board or court the power to say that so many men are all right, and so many men are too many * * * So we declined to adopt the provisions that are now in the Petrillo [Lea] Act * * * We thought that probably we had better wait and see what happened, in any event, even though we are in favor of prohibiting all featherbedding practices. However, we did accept one provision which makes it an unlawful labor practice for a union to accept money for people who do not work. That seemed to be a fairly clear case, easy to determine, and we accepted that additional unfair labor practice on the part of unions which was not in the Senate bill. (Emphasis supplied.)

Senator Taft stated further that (93 Cong. Rec. 6601):

> * * * the conferees were of the opinion that general legislation on the subject of featherbedding was not warranted at least until the joint study committee proposed by this bill could give full consideration to the matter. Since the matter of exacting money for services not performed borders definitely on extortion, the conferees agreed to the insertion of a paragraph * * * which makes it an unfair labor practice to cause or attempt to cause employees to pay money under such circumstances.

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[86] 80th Congress, 1st Session, House of Representatives, Report No. 510, p. 45.

In a colloquy with Senator Pepper which followed, Senator Taft stated that it would not be "in the nature of an exaction" for employees to insist upon paid rest periods, and if they threatened to strike for that purpose it likewise would not be violative of the Act, because, "They are paid for the work they do." Senator Taft also stated that a union's insistence upon a day's "call-in" pay for men reporting and finding no work would not be a violation. He said, "He is paid for coming to work at the request of the employer." And when Senator Pepper pointed out that the language of 8 (b) (6) was so broad that it did in fact cover rest periods and call-in pay, because these were payments for time when no actual work was done, Senator Taft said (93 Cong. Rec. 6603):

> I am sorry to disagree with the Senator, but it seems to me that it is perfectly clear what is intended. It is intended to make it an unfair labor practice for a man to say, "You must have 10 musicians, and if you insist that there is room for only 6, you must pay for the other 4 anyway." That is in the nature of an exaction from the employer for services which he does not want, does not need, and is not even willing to accept.

A week later, after noting that questions had been raised as to payments for lunch and rest periods, etc., Senator Taft made the following statement (93 Cong. Rec. 7001-2):

> Of course this section does not affect such industrial practices, as such activities are done at an employer's request and *for valuable consideration incident to the employment itself.* The use of the words "in the nature of an exaction" makes it quite clear that *what is prohibited is extortion by labor organizations or their agents in lieu of providing services which an employer does not want.* (Emphasis supplied.)

Finally, on the last day of debate in the Senate, just before the vote to override the President's veto, Senator Ball declared, as to 8 (b) (6) (93 Cong. Rec. 7001-2):

> *There is not a word in that * * * about "featherbedding."* It says that it is an unfair labor practice for a union to force an employer to pay for work which is not performed * * * it [applies] only to

> situations for instance, where the Musicians' Federation forces an employer to hire one orchestra and then to pay for another stand-by orchestra, *which does no work at all.* (Emphasis supplied.)

It is apparent from the foregoing that Congress intended to give 8 (b) (6) a restricted application. A distinction was drawn between the employment of unnecessary workers, all of whom perform actual services, and the payment for persons, such as stand-by crews, who in their relationship to an employer perform no services at all The House bill proscribed both types of practice. In conference, however, the first was eliminated and only the second retained. It is clear from the legislative history as a whole that what Congress sought to reach by Section 8 (b) (6) was extortion by the forcible introduction of stand-by or similar practices to secure payment for which no services at all were required or expected in return, and for which there was, therefore, no quid pro quo. It is also clear that "featherbedding" in its general aspects—commonly understood to include make-work devices engaged in by workers who already stand in a proximate employer-employee relationship, and who otherwise perform services in his interest—was not contemplated as falling within the coverage of the statutory interdiction.[87]

It is unnecessary for purposes of decision in this case to determine whether employees who perform no work at all of benefit to an employer,[88] would be performing "services" within the meaning of Section 8 (b) (6). That is not the situation with which we are here confronted. Here it is conceded that all the employees who perform reproduction work—on an average during 5 percent or less of their working time—also perform services which are of admitted benefit to the employer. This, then, is not the "clear case," where payment is required "for people who do not work," that Congress sought alone to reach. The employees in this case not only work but render valuable services, even though there is included in their total compensible time a relatively small amount of activity which provides no benefit to the employer. Unlike "stand-by"

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[87] See, Cox, **Some Aspects of the Labor Management Relations Act, 1947**, 61 Harv. L. Rev. 274, 288.

[88] e.g., musicians who, instead of standing-by, perform in a soundproof and inaccessible room.

musicians, they "are paid for the work [services] they do" and the overall payment is supported by "valuable consideration incident to the employment itself."

On the basis of the Senate debate, I am persuaded that it was not the intent of Congress, where such overall consideration is present, to proscribe a union's efforts to include within compensible time incidental items of work or inactivity, simply because such items, standing separate and apart, do not themselves constitute a service (read "benefit") to the employer. Were that not so, there would be no rational basis for excluding from the purview of Section 8 (b) (6) a union's attempt by means of strike action to force an employer to pay for abstentions from work, such as for paid lunch or rest periods, which an employee does not want and which he may justifiably regard as of no economic value to him. It is true that reproduction, unlike paid rest or lunch periods, is a "make-work" device, which may fall within the general category of "featherbedding." But the statute itself makes no distinction between desirable and undesirable forms of "services which are not performed." And Congress deliberately refrained from outlawing "featherbedding" practices generally, expressly reserving that for future study and consideration. As Senator Taft's statement reflects, Section 8 (b) (6) was designed to reach only "extortion by labor organizations or their agents in lieu of providing services which an employer does not want." Where, as here, the employees do provide substantial services which an employer does want, the question of whether time spent on additional unnecessary work (in this case reproduction) shall be included in the payment for such services, and whether that form of compensation is better than some other, was left by Congress as a matter for determination between the Union and the employers. It is not a matter coming within the scrutiny of the Board.

Nor is this conclusion altered by the fact that an employer, obliged to pay for time devoted to reproduction for which he has no need, is compelled to hire additional employees who otherwise might be unnecessary[89] The elimination in the Conference bill of the House provision making it a "featherbedding practice" to require the em-

[89] Such a result would also flow from a requirement that an employer grant paid rest or vacation periods.

ployment of "persons in excess of the number of employees reasonably required by such employer to perform actual services," as well as Senator Taft's explanation for the deletion, makes it clear that Congress, although concerned with that situation, concluded that its inclusion in the Act was not warranted at the time the Act was amended.[90]

There is an additional reason why the reproduction allegations of the complaint must fall. As noted, the record shows at most that Respondents caused their subordinate unions to demand and insist upon the inclusion of reproduction clauses which had been in contracts for 50 years, and which, as the record also shows, had long been regarded as an item to be traded off against wages and hours in collective bargaining. What means of pressure, if any, Respondents would have authorized if an employer, otherwise willing to come to terms with a local, had refused to yield to reproduction, the record does not disclose. That situation did not arise, and so far as this case is concerned remains speculative and hypothetical. I am persuaded from a reading of the statute and its history that Congress, intended proof of something more than an insistent demand in collective bargaining when it proscribed an "attempt to cause an employer * * * to pay * * *, in the nature of an exaction * * * for services * * * not performed." The House bill, from which Section 8 (b) (6) was derived, proscribed only union activities in the form of a "strike or other concerted interference with an employer's operations." Although the Conference bill substituted for these words "cause or attempt to cause," it also added the words, "in the nature of an exaction." The legislative history shows no disposition, on the part of the Senate at least, to broaden the provisions of the House bill with respect to the prohibited form of activity. It discloses instead that what Congress was concerned with were practices in the nature of "extortion." Clearly, a demand made at a bargaining table cannot be deemed "extortion," especially where that demand is for an item which has traditionally been regarded as part of the com-

[90] It is noted that the additional employees who are hired because of the reproduction requirement do not devote their full time to reproduction, but like all employees in their group, have such work allocated to them from time to time when they are working on live matter which takes precedence.

pensation to be paid to the employees in the unit as a group. To hold otherwise is to say that any demand in negotiations for an item which an employer or labor union does not want, but to which it accedes, however reluctantly, in order to reach a settlement on other issues, is "in the nature of an exaction."[91] Just what form or degree of union pressure would be required to bring within the proscription of 8 (b) (6) a union's efforts to "cause an employer * * * to pay * * * in the nature of an exaction * * * for services * * * not to be performed," it is unnecessary here to decide. Suffice it to say that on this record, I am not satisfied that the General Counsel has sufficiently established that Respondents engaged in activities made illegal by Section 8 (b) (6), whatever view is taken on the issue of whether payment for reproduction constitutes a payment for services not performed.

I shall accordingly recommend dismissal of the allegations of the complaint relating to reproduction.

IV. The effect of the unfair labor practices upon commerce

The activities of Respondents set forth in Section III above, occurring in connection with the operations of newspaper publishers, described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and, to the extent found herein to constitute unfair labor practices, tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Having found that Respondents, and each of them, have engaged in certain unfair labor practices, it will be recommended that they, and each of them, cease and desist therefrom. Since Respondents' activities violative of Section 8 (b) (2) discloses a propensity on their part to en-

[91] The words "cause or attempt to cause" also clearly imply something more than a bargaining demand. It is noteworthy that the words, "persuade or attempt to persuade," were used in Section 8 (b) (2) in the Senate bill as originally passed, but were changed in conference to "cause or attempt to cause." In explaining this substitution, Senator Taft said that the House conferees had objected to the Senate language "on the ground that it seemed inconsistent with the provisions guaranteeing all parties freedom of expression."

gage in persistent efforts, but not necessarily by the same method, to cause or attempt to cause employees to violate Section 8 (a) (3), it will be recommended that the cease and desist order cover not only activities of the specific kind herein found illegal, but activities which in any manner cause or attempt to cause employers to violate Section 8 (a) (3) of the Act.

Upon the basis of the above findings of fact and the entire record in the case, I make the following:

Conclusions of Law

1. A substantial number of newspaper publishers throughout the United States, including specifically but not exclusively, the publishers of the newspapers listed in Appendix A, against whom Respondents' acts and conduct have been directed are engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. Respondent International Typographical Union is a labor organization within the meaning of Section 2 (5) of the Act.

3. Respondents Randolph, Taylor, Brown and Hurd are agents of Respondent International Typographical Union within the meaning of Section 8 (b) of the Act.

4. By attempting to cause, directly and through subordinate ITU locals, a substantial number of newspaper publishers throughout the United States to employ in their composing and mail rooms only members of International Typographical Union, Respondents, and each of them, attempted to cause such publishers to discriminate against their employees, in violation of Section 8 (a) (3) of the Act, and thereby engaged in unfair labor practices within the meaning of Section 8 (b) (2) of the Act.

5. By causing, directly and through subordinate ITU locals, a substantial number of newspaper publishers throughout the United States to maintain closed shop hiring practices and conditions, Respondents, and each of them, restrained and coerced employees in the exercise of rights guaranteed in Section 7 of the Act, and thereby engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.

6. By engaging, directly and through subordinate ITU locals, in a course of conduct, coercive as to employers, designed, inter alia, to induce a substantial number of

newspaper publishers to hire only foremen who are ITU members, Respondents, and each of them, restrained and coerced employers in the selection of their representatives for the adjustment of grievances, and thereby engagd in unfair labor practices within the meaning of Section 8 (b) (1) (B) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

8. Respondents have not engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act, by demanding or causing subordinate ITU locals to demand clauses, phrases or provisions in contracts or agreements which would restrain or coerce employees in the exercise of their rights under Section 7 of the Act; by failing or refusing or causing subordinate ITU local unions to fail or refuse to bargain collectively in good faith; or by engaging or causing subordinate ITU locals to engage in slow-downs in support and as part of other unfair labor practices.

9. Respondents have not engaged in unfair labor practices within the meaning of Section 8 (b) (6) of the Act, by demanding or requiring, directly or through subordinate locals, contract provisions or conditions providing for payment for reproducing advertising material.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, it is recommended that Respondents International Typographical Union, Woodruff Randolph, Larry Taylor, Elmer Brown, and Don Hurd, and each of them, and their agents and representatives, shall:

(a) Cease and desist from:

1. In any manner promulgating, disseminating, pursuing, observing, or in any wise giving effect to, or ordering, instructing, requiring, recommending, inducing, encouraging, or in any wise causing subordinate local unions and members of Respondent International Typographical Union, or any of them, to promulgate, disseminate, pursue, observe, or in any wise give effect to, any policy, practice, or course of conduct, including without limitation conditions of employment and contracts containing provisions for cancellation of an entire agreement upon 60 days notice, an object of which is to, or which if any

manner, causes or attempts to cause employers in the newspaper industry to discriminate against employees in regard to hire or tenure of employment, or any term or condition of employment, because of non-membership in International Typographical Union or its subordinate local unions, or any of them, except in accordance with the provisos to Section 8 (a) (3) of the Act.

2. In any other manner, directly or indirectly through subordinate local unions of the International Typographical Union, causing or attempting to cause employers in the newspaper industry, or any other employers, to discriminate against employees in regard to hire or tenure of employment, because of non-membership in International Typographical Union or its subordinate local unions, or any of them, except in accordance with the provisos to Section 8 (a) (3) of the Act, as amended.

3. Directly or through subordinate local unions of the International Typographical Union, restraining or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act, by causing employers in the newspaper industry, or any other employer, to maintain conditions of employment requiring employees, including applicants for employment, to obtain or retain membership in International Typographical Union or any subordinate local union of International Typographical Union, except in accordance with the provisos to Section 8 (a) (3) of the Act.

4. Directly or through subordinate local unions of International Typographical Union, restraining or coercing employers in the newspaper industry, or any other employer, to hire only foremen who are members of the International Typographical Union, where such foremen act as employer representatives for the purposes of collective bargaining or the adjustment of grievances.

(b) Take the following affirmative action which it is found will effectuate the policies of the Act:

1. Publish in the Typographical Journal, official paper of the International Typographical Union, a copy of the notice attached hereto and marked, Appendix C.

2. Notify the Regional Director for the Ninth Region in writing within twenty (20) days from the date of the receipt of this Intermediate Report what steps Respondents have taken to comply therewith.

It is further recommended that unless Respondents shall

within twenty (20) days from the receipt of this Intermediate Report notify the said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring Respondents to take the action aforesaid.

It is further recommended that the complaint be dismissed with respect to all such allegations thereof as have been found in the Intermediate Report insufficiently supported in law or in fact.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board, Series 5, effective August 22, 1947, any party may, within twenty (20) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.45 of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and six copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies on, together with the original and six copies of a brief in support thereof; and any party may, within the same period, file an original and six copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each of the other parties. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in said Section 203.46, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations, and recommended order herein contained shall, as provided in Section 203.48 of said Rules and Regulations be adopted by the Board and become its findings, conclusions, and order, and all objections and exceptions thereto shall be deemed waived for all purposes.

Arthur Leff
Arthur Leff
Trial Examiner

Dated: August 6, 1948

IR-1691

APPENDIX A
Commerce Data

Name of Newspaper	Daily Circulation	Percent of Interstate Circulation	Approximate annual dollar value out of State purchases	Percent of National out of State Advertisement
Chicago				
Tribune	1,000,000	16.63	$16,000,000	13.27
Journal of Commerce	35,000	55	114,000	75
Morning Sun; and	300,000	17.37	6,000,000	20
Evening Times	460,000	4.40		
Daily News	500,000	5.86	3,650,000	majority
Herald American	540,000	7.89	5,000,000	16.97
Detroit				
Times	410,000	.8	3,500,000	26.2
News	426,000	.8	*	12.3
Free Press	430,000	1.72	3,300,000	19.09
Buffalo				
Courier Express	145,000	10.	1,500,000	8.
Evening News	273,000	3.	2,000,000	7.4
Albany (N. Y.)				
Knickerbocker News	52,500	1.3	300,000	14
Times-Union	52,000	2	Over 89,500	
Sioux City (Iowa)				
Journal Tribune	84,000	31	439,000	20
Hammond (Ind.)				
Times	37,000	11.91	209,000	7
South Bend (Ind.)	93,000	17	630,000	13.3
Columbus (Ga.)				
Ledger-Enquirer	25,000	11	**	18
Jamestown (N. Y.)				
Post-Journal	26,373	5.	130,000	16.67
Rockville Center (N. Y.)				
Nassau Daily Review Star		.3	155,000	10
New Bedford (Mass.)				
Standard-Times		Less than 1%	280,000	16.5
Rochester (N. Y.)				
Democrat & Chronical	100,000	.3	89,500	
New York City				
15 members N.Y.C. Publishers Association ***	6,650,000	18.3	Over 9,000,000	

* Dollar value not shown, but record shows purchase of 60,692 tons of newsprint from out of State.

** Dollar value not shown, but record shows purchase of 2,400 tons of newsprint from out of State.

*** The following newspapers located in the New York City metropolitan area are members of the Association: Times, Herald Tribune, Daily News, Mirror, Journal-American, Post, The Sun, World-Telegram, Wall Street Journal of Commerce, Long Island Press, Long Island Star Journal, Brooklyn Eagle, Bronx Homes News, Il Progresso Italo-American.

APPENDIX B (P-6A)

(a) Party of the first part hereby recognizes the party of the second part as the exclusive bargaining representative of all employees subject to the latter's jurisdiction.

(b) The party of the first part recognizes the right of the party of the second part to formulate laws, rules and decisions for conditions under which its members may seek or accept employment and agrees there shall be no interference whatsoever by the party of the first part in the observance of such laws, rules and decisions, nor shall any issue be raised or complaint considered except in event such laws, rules or decisions conflict with the terms of this agreement.

(c) It is understood and agreed that the General Laws of the International Typographical Union, in effect January 1, 1947, not in conflict with law or this contract, shall govern relations between the parties on conditions not specifically enumerated herein.

(d) The party of the first part agrees that it will not assign any work traditionally performed by journeymen and apprentice printers to any employe other than journeymen and apprentice printers, as defined by the party of the second part. It is further agreed that in the event of a difference of opinion between the parties to this agreement as to the correctness or desirability of the party of the second part's determination as to what work has been traditionally performed by journeymen and apprentice printers, the party of the first part may, on 10 days' notice to the party of the second party, declare this agreement null and void. During said period of 10 days, it is mutually agreed that neither party hereto will seek Joint Standing Committee or outside assistance in the determination of such matters, but that said 10-day period shall be used entirely in efforts to compose the matter solely between the parties to this agreement.

(e) The party of the first part recognizes that the party of the second part cannot compel members to work with non-union printers and apprentices, and therefore agrees that any refusal by its workers to work with non-union employes shall not constitute a breach of this agreement.

(f) The parties further agree that: No member of the union, second party hereto, shall be required or ex-

pected to cross a picket line established by any subordinate union of the International Typographical Union.

(g) The party of the first part agrees not to require its employes to perform composition or other work executed or to be further worked on, wholly or in part, by employes working under sub-standard conditions, as defined by the party of the second party. It is further agreed that in the event of a difference of opinion between the parties to this agreement as to the correctness or desirability of the party of the second part's determination as to what work has been produced under sub-standard conditions, the party of the first part may on 10 days' notice to the party of the second part, declare this agreement null and void. During said period of 10 days, it is mutually agreed that neither party hereto will seek Joint Standing Committee or outside assistance in the determination of such matter, but that said 10-day period shall be devoted entirely to efforts to compose the matter solely between the parties to this agreement.

(h) A standing committee of two representatives appointed by the party of the first part, and a like committee of two representatives appointed by the party of the second part, shall be maintained; and in case of a vacancy, absence or refusal of either of such representatives to act, another shall be appointed in his place. To this joint standing committee shall be referred all disputes which may arise as to the construction to be placed upon any clause of the agreement, except as provided otherwise herein, or alleged violations thereof, which can not be settled otherwise, and such joint standing committee shall meet when any question of difference shall have been referred to it for decision by the executive officers of either party to this agreement. Should the joint standing committee be unable to agree, then it shall refer the matter to a board of arbitration, the representatives of each party to this agreement to appoint two arbiters, and the four to agree upon a fifth. The decision of this board shall be final and binding upon both parties: Provided: That local union laws not affecting wages, hours or working conditions and the general laws of the International Typographical Union shall not be subject to arbitration. The conditions prevailing prior to any such dispute shall be maintained until decided as above provided.

(i) It is agreed that the procedures for the settlement of any differences or grievances arising under this contract are exclusive, and in consideration of the mutual undertaking herein contained, it is agreed by and between the parties hereto that the only recourse each may have against the other for any damages alleged to be due for any breach of this contract shall be to the Joint Standing Committee provided herein and that no award for damages shall in any event exceed the sum of $25; provided that such limitation of $25 shall not apply to claims for wages.

APPENDIX C

NOTICE TO MEMBERS OF INTERNATIONAL TYPOGRAPHICAL UNION PURSUANT TO THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby give notice that:

We Will Not in any manner promulgate, disseminate, pursue, observe, or in any wise give effect to, or order, instruct, require, recommend, induce, encourage, or in anywise cause subordinate local unions and members of INTERNATIONAL TYPOGRAPHICAL UNION or any of them, to promulgate, disseminate, pursue, observe, or in any wise give effect to, any policy, practice, or course of conduct, including without limitation conditions of employment and contracts containing provisions for the cancellation of an entire agreement upon 60 days notice, an object of which is to, or which in any manner, causes or attempts to cause employers in the newspaper industry, or any other employers, to discriminate against employees in regard to hire or tenure of employment, because of non-membership in INTERNATIONAL TYPOGRAPHICAL UNION or its subordinate local unions, or any of them, except in accordance with the provisos to Section 8 (a) (3) of the National Labor Relations Act.

We Will Not in any other manner, directly or in-

directly through subordinate local unions, cause or attempt to cause employers in the newspaper industry, or any other employers, to discriminate against employees in regard to hire or tenure of employment, because of non-membership in INTERNATIONAL TYPOGRAPHICAL UNION or its subordinate local unions, or any of them, except in accordance with the provisos to Section 8 (a) (3) of the National Labor Relations Act.

We Will Not, directly or through subordinate local unions, restrain or coerce employees in the exercise of their rights guaranteed by Section 7 of the Act, by causing employers in the newspaper industry, or any other employer, to maintain conditions of employment requiring employees, including applicants for employment, to obtain or retain membership in INTERNATIONAL TYPOGRAPHICAL UNION or any subordinate local union of INTERNATIONAL TYPOGRAPHICAL UNION, except in accordance with the provisos to Section 8 (a) (3) of the National Labor Relations Act.

We Will Not directly or through subordinate local unions of INTERNATIONAL TYPOGRAPHICAL UNION, restrain or coerce employers in the newspaper industry, or any other employer, to hire only foremen who are members of the INTERNATIONAL TYPOGRAPHICAL UNION, where such foremen act as employer representatives for the purpose of collective bargaining or the adjustment of grievances.

INTERNATIONAL TYPOGRAPHICAL UNION

By.....
President

Elmer Brown
Don Hurd
Woodruff Randolph
Larry Taylor

UNITED STATES OF AMERICA
Before The National Labor Relations Board
Ninth Region

In the Matter of International Typographical Union, and its Agents, Woodruff Randolph, Larry Taylor, Elmer Brown, and Don Hurd and American Newspaper Publishers Association	Case No. 9-CB-5

EXCEPTIONS BY THE GENERAL COUNSEL TO THE TRIAL EXAMINER'S INTERMEDIATE REPORT

The General Counsel hereby takes exceptions to the following rulings, findings, conclusions, recommendations and omissions of the Trial Examiner:

1. Insofar as it may have any relevancy, the statement in footnote 6, page 5, that the Pressmen, Bookbinders, Stereotypers, and Photo Engravers organized their own labor organizations without objection from the I.T.U. since common knowledge of industrial history shows that this is not a fact.

2. The finding on page 6, line 47, "In practice such laws (referring to I.T.U. general laws) are adopted only after the subject matter covered has won general acceptance in the industry largely as a result of collective bargaining by the larger locals."

3. The finding, page 6, line 53, "It has long been traditional in the industry to consider the I.T.U. general laws as a part of every contract," insofar as this fails to take into account the fact that between 1922 and 1945 many publishers were unwilling to include such laws in collective bargaining.

4. The finding at page 7, line 29, "In no instance has the non-complying local been subjected to any reprisal or disciplinary action by the I.T.U.".

5. The finding at page 9, line 20, that the I.T.U. encourages joint management labor apprenticeship committees, at least prior to March 27, 1948.

6. The failure to find, on page 9, line 45, that I.T.U. members have in fact worked with non-union men in other

shops even where they were defeated as bargaining representative, such as the Louisville Courier Journel. (Record page 3528).

7. The failure to find, on page 22, lines 17 to 43, that the publishers in objecting to Form A also objected to the "All or nothing" or invalidation clause which provided that if any section was invalid the entire agreement terminated. (See Record, Pages 557-9 and 563).

8. The finding at page 24, line 3, that "There was little discussion at this or any other meeting concerning the individual clauses of Form P 6 A.

9. The failure to find, on page 26, line 15 et seq., that Randolph refused to state whether the so-called Woodard proposal would be acceptable if it contained wages and other economic conditions.

10. The finding or conclusion on page 26, lines 31 and 32, that "The net result was that by mutual agreement the negotiations were declared deadlocked" since there was no such agreement.

11. The finding or conclusion on page 27, line 5, that "Pilch testified without denial and it is found that Local 16 never instructed its members to engage in slow downs.

12. The failure to find at page 27, line 23, that Pilch told employees at the Herald-American, the Daily News and the Tribune approximately the same thing he told employees at the Chapel meeting at the Sun-Times. (see record page 1463-64).

13. The finding on page 28, line 49, that Harrigan conceded at the hearing that the Hammond Times did not want to make any wage offer except on the basis of the Chicago settlement.

14. The finding at page 28, line 31, that "On the basis of this conversation, Rhodes was led to believe that the Times would go along with the new wage scale adopted by Local 16."

15. The finding, in footnote 26, page 28, that "The General Counsel failed to establish by a fair preponderance of credible evidence that slow downs occurred at the Hammond Times as contended."

16. And in connection with the foregoing the failure to consider the admission of Union witness Rhodes that if the men had received more money, there might have been more work, as well as other pertinent evidence.

17. The failure to find, at page 28, with reference to

the Hammond Times that the local representative of the union had no authority to bargain prior to November 26 and that thereafter, the local representatives had no authority to grant any concessions or do any bargaining on the wage question.

18. The failure to find on page 30 in connection with the Sioux City, Iowa negotiations that on or about January 15, 1948 the I. T. U. and its subordinate Local Union No. 180 imposed conditions of employment upon the publisher.

19. The finding, on page 33, line 4, that "At least as to the International, there is no evidence from which a contrary inference may be reasonably drawn. (As to authorization of a slow down).

20. The finding, at page 33, line 12, that "Within a day or two thereafter, however, the initial slow downs ceased, except to a limited extent at the Times, and this subject was not again raised with Randolph at any time thereafter."

21. The finding, at page 33, line 16, that the slow downs at Detroit were corrected as a direct result of Randolph's insistence to Detroit Mailers Union No. 40, President Burns.

22. The finding, at page 33, line 20, that the facts are insufficient to impute responsibility for the slow downs to the I. T. U. or its officers.

23. The failure to find, on page 34, in connection with the Buffalo negotiations that on or about November 2 the I.T.U. and its subordinate local Buffalo Typographical Union No. 9 imposed conditions of employment upon the publishers.

24. The failure to find, on page 35, in connection with New Bedford, Massachusetts, that on or about January 9, 1948, the International Typographical Union and its respective subordinate local, New Bedford Typographical Local No. 276, imposed conditions of employment upon the publisher.

25. The finding, at page 36, line 28, that an employee discharged by the foreman of the day crew should not be hired by the foreman of the night crew and vice versa.

26. The finding on page 39, line 47, as to the New York Employing Printers Formula that "As was then generally known (referring to March 23) the Formula contemplated a contract for a fixed duration term of a year," since the record supports no such finding as of that date.

27. The finding, in footnote 50, page 41, that the Local Union and Chapel Rules stated "Merely that nothing in the contract shall be construed to interfere with any rules of the Union for the conduct of its own affairs not in conflict with the law or the contract." (Underlining supplied, insofar as the use of the word merely inaccurately portrays the effect).

28. The finding, in footnote 51, page 41, that the Union did not claim varitypists engaged in promotional work.

29. The finding at page 44, line 10, that the Miami Local had entered into a "What in legal effect was a binding contract for a year," since this may or may not have been correct but in any event appears to be an unnecessary finding.

30. The finding, at page 45, line 20, that the strikes have occurred in about eleven cities, since the number is substantially larger.

31. The finding, at page 45, line 22, that in each instance except at Columbus, Georgia the strike was authorized and approved by the I.T.U. solely on the issue of wages.

32. The finding, at page 48, line 1, that "It is inaccurate to say that conditions were imposed upon employers * * *."

33. The finding, at page 48, line 8, that "Conditions form, as a rule, was not posted until after agreement was reached on all issues * * *."

34. The failure to specifically find that there were imposed upon employers either form conditions of employment or conditions of employment by virtue of operation by the Union under I.T.U. general laws.

35. The finding, at page 48, line 22, and footnote 55, that Clauses a, b, c, d, and e of P 6 A do not make Form P 6 A in effect an agreement to maintain a closed shop.

36. The failure to find respondents, by insisting upon or causing insistence upon Clauses a, b, c, d and e, and also the other clauses from a to i inclusive in Form P 6 A, either separately or in conjunction with one another, attempted to cause employers to discriminate against employees in violation of Section 8 (a) (3).

37. The failure to specifically find that respondents, by insisting upon or causing insistence upon a 60 day termination clause and clauses a to i of Form P 6 A either separately or in conjunction with each other, restrained

and coerced employees in violation of Section 8 (b) (1).

38. The failure to specifically find that Respondents, by causing employers to enter into P 6 A Form contracts, restrained and coerced employees in violation of Section 8 (b) (1) (A).

39. The failure to specifically find that Respondents, by not entering into contracts or by causing subordinate unions not to enter into contracts, caused employers to maintain closed shop conditions and otherwise operate under I.T.U. laws and thereby restrained and coerced employees in violation of Section 8 (b) (1) (A).

40. The finding, at page 48, line 23, that P 6 A was not designed as a closed shop contract, if this is the finding, which is made since obviously there could be no "legally binding" closed shop agreement.

41. The finding or legal conclusion, on page 52, line 9, if it be such, that it is not violative of Section 8 (b) (1) (A) for a labor organization to "Cause employers to pursue a course of refusing to deal with other employers who hire non-union printers."

42. The finding, at page 52, line 30, that "The contention that Respondents' conduct in this regard (referring to struck work or sub-standard clauses) was violative of Section 8 (b) (2) rests on no firmer ground."

43. The legal conclusion, at page 52, line 44, that Section 8 (b) (4) reflects a Congressional intent to limit its proscription of secondary pressure to activities involving strikes and concerted refusals to work.

44. The refusal or failure to find, at page 52, Respondents' insistence upon or demands for "struck work" or sub-standard work such as Clause "g" of P 6 A or like clauses to be directly violative of Sections 8 (b) (1) (A) and 8 (b) (2).

45. The finding, at page 53, line 11, that Clause "f" of P 6 A is not violative of Section 8 (b) (2).

46. The failure to find, at page 53, that Clause "f" of P 6 A is directly violative of Section 8 (b) (2) and also Section 8 (b) (1).

47. The finding at page 53, line 8, that Clause "f" was designed in order to excuse refusals by members of a Typographical union or Mailers union to cross each others picket line established at the office at which such employees were employed.

48. The finding, at page 53, line 34, that "There is no problem of a jurisdictional dispute in the traditional

sense, since no other union is competing with the I.T.U. for work over which it asserts jurisdiction."

49. The finding, at page 53, line 36, that "There is no proof that the I.T.U. is seeking to interfere with the self-organizational rights of non-union employees in other trades, crafts or classes or that it is attempting to cause employees to discriminate against non-union employees to encourage or discourage membership in any labor organization.

50. The finding, at page 53, line 48, that "The Union's claim in effect was that employees in its existing unit should alone be permitted to work on the new substitute equipment."

51. The finding, at page 54, line 8, that "At New York City, as at Jamestown, there was no intent or attempt to force any non-union employees into the Union or the unit."

52. The finding, at page 54, line 19, that "It is thus clear that the I.T.U. was not seeking the inclusion of these non-union employees in its unit or Union."

53. And the finding at page 54, line 20, that "Its object • • • was to provide • • • that employees in the I.T.U. unit • • • would be assigned to work on such substitute equipment."

54. The finding, at page 54, line 32, that no violation of 8 (b) (1) (A) or 8 (b) (2) arising from the I.T.U. position on jurisdiction has actually occurred.

55. The failure to find that the I.T.U. position on jurisdiction violated both Sections 8 (b) (1) (A) and 8 (b) (2).

56. The finding, at page 55, line 4, that "The contention of the General Counsel (with respect to a competency clause) is necessarily based upon the untested assumption that the I.T.U. in future bargaining meetings would not have deviated from the last position expressed by it • • •."

57. The finding or legal conclusion, at page 55, line 14, if it be such, that "The only discrimination forbidden by the Act is that which encourages or discourages membership in a labor organization."

58. The conclusion, at page 54, line 15, without limitation "That the Act does not make it illegal to accord preference or to limit employment on the basis of experience, ability or prior employment with a particular employer or in the industry."

59. The conclusion, at page 55, line 18, without limita-

tion that "A Union, particularly a craft union, in order to protect its working standards has a legitimate interest in seeing to it that only qualified craftsmen are allowed to work in its trade."

60. The finding or conclusion, at page 55, line 23, that the Respondent's request for or insistence upon competency clauses does not constitute per se a violation of Section 8 (b) (2) of the Act.

61. The finding or conclusions, at page 55, line 24, that "A conclusion of illegality can be reached if, but only if, the record can be said to support a finding either (1) that the I.T.U. attempted to impose competency clauses illegally discriminatory upon their face or (2) that it was Respondent's purpose and design to interpret and apply the competency standards—although not illegal upon their face—in such a manner as to cause employers to violate Section 8 (a) (3).

62. Any inferential finding, if any, that the competency clauses referred to by the Trial Examiner are not illegal on their face.

63. The findings, if such, at page 55, line 29, that "The record of this particular case * * * is insufficient to support either of these findings," referring to the findings set forth in the preceding sentence).

64. The finding, at page 55, line 34, without limitation that a joint arrangement for testing competency of new employees is not on its face discriminatory within the meaning of Section 8 (a) (3).

65. The conclusion, at page 55, line 37, if it be such, that it is not illegal for it (the Union) in order to protect that interest (referring to whatever interests the Union may have in competency) to demand an equal voice in the determination of competency.

66. The conclusion, at page 55, line 41, that as a matter of law "it cannot be assumed in the case of a Union any more than in the case of an employer that because it is placed in a position where it may do so it will in fact discriminate—that is, until the contrary is shown."

67. The finding, at page 55, line 43, (page 56, lines 1 to 4) that "the only extrinsic proof relied upon by the General Counsel to establish that the competency clauses were in fact designed to exclude non-union members, consisted of (a) The I.T.U. letter to the New York Local * * * and (b) Respondent's course of conduct prior to the injunction."

68. The failure to consider Randolph's testimony concerning whom he considered capable of judging competency, i.e., only persons in the I.T.U. (Record 3615).

69. The finding, at page 56, line 4, "that the statements relied upon in the I.T.U. letter to support a finding of discriminatory purpose are at best equivocal."

70. The findings, at page 56, line 6, that "The I.T.U. insisted upon a voice in selecting Examiners and in establishing standards does not necessarily evince a purpose and intent to maintain in effect closed shop conditions * * *." It is at least equally consistent with an inference that the I.T.U. desired to provide assurance that the competency standards to be accepted would be the same or similar to those which it required for journeymen membership.

71. The apparent finding, at page 56, line 24, that the Board is being asked to decide "in vacuo an important issue, referring to competentcy) * * *."

72. The conclusion, at page 56, line 30, that when Respondent's conduct unequivocally discloses that competency clauses are to be utilized to maintain closed shop conditions or cause violation of Section 8 (a) (3) it will be time enough for the Board to intervene.

73. The conclusion, at page 56, line 34, that the protection of the statute will not in the meantime be suspended.

74. The failure to find that the I.T.U. by seeking or insisting upon equal participation in examining Boards to determine competency were attempting to cause discrimination in violation of Section 8 (b) (2).

75. The failure to find that the Respondents, by seeking or insisting upon a clause providing that journeymen members of the I.T.U. are automatically to qualify as competent employees while other persons are required to otherwise establish competency, have attempted to cause discrimination against employees in violation of Section 8 (b) (2).

76. The finding, at page 57, line 1, that under the circumstances of this case a Union's requirements that only its foremen be permitted to hire may be evidence but is not necessarily conclusive of an attempt, illegal under Section 8 (b) (2) to cause an employer to discriminate against non-union men in hiring.

77. The finding, at page 57, line 4, that such a showing

(referring to a demand for foremen) is, however, lacking in this case (after the injunction).

78. The finding, at page 57, line 11, that "on this record it cannot be concluded, therefrom, that Respondents, during the post injunction period, engaged in an actual violation of Section 8 (b) (2).

79. The failure to find that Respondents did engage in violation of Section 8 (b) (2) after the injunction.

80. The conclusion, on pages 57 to 59, that Union's refusal to bargain cannot constitute a violation of Section 8 (b) (1) and particularly in this connection that the failure of the International Typographical Union to bargain is not a violation of Section 8 (b) (1) and to the subordinate conclusions upon which these findings or conclusions are premised.

81. The conclusion, on pages 58 to 60, that a parent union cannot coerce a subordinate or local union within the meaning of Section 8 (b) (1) and particularly that the Respondents' actions in causing subordinate unions not to bargain were not and could not in any event constitute a violation of Section 8 (b) (1) (A), together with the subordinate findings and conclusions upon which these are predicated.

82. The finding, at pages 58, line 43, that "it was stipulated that all employees involved in this case were union members."

83. The failure to find that the International Typographical Union was and is a representative for the purposes of collective bargaining within the meaning of Section 9 (a), of employees in a substantial number of appropriate units of composing room employees and mail room employees.

84. The failure to find that the I.T.U. by failing and refusing to bargain has violated and is violating Section 8 (b) (1).

85. The failure to find that the I.T.U. coerced employees in violation of Section 8 (b) (1) by causing its subordinate local unions to fail and refuse to bargain collectively with employers in good faith.

86. The failure to find that Respondent I.T.U. by insisting upon of demanding conditions of employment, refusing to enter into contracts or agreements, insisting upon contracts terminable upon 60 days notice, or insisting upon each or all of the provisions a to i of the P 6 A

Form thereby failed and refused to bargain collectively with employers and by so doing restrained and coerced employees in violation of Section 8 (b) (1).

87. The failure to find that the insistence by the I.T.U. upon a reproduction clause constituted a failure to bargain.

88. The failure to find that Respondents by causing subordinate unions of I.T.U. to insist upon or demand conditions of employment, to refuse to enter into contracts or to insist upon contracts terminable upon 60 days notice or to insist upon each or all of the provisions a to i of the P 6 A Form restrained and coerced employees in their rights under Section 8 (a) (1) by causing a bargaining representative to fail to bargain collectively in good faith.

89. The failure to find that Respondents by causing subordinate unions to insist upon reproduction provisions thereby caused them to fail and refuse to bargain collectively in good faith in violation of Section 8 (b) (1).

90. The finding, at pages 60, line 28, and 61, line 1, that the General Counsel has not established by substantial evidence that the Respondents were responsible for the occurrence of slow downs.

91. The finding, at page 61, line 10, that "slow downs were directly due to a superseding cause—the refusal of the publishers to grant or discuss wage increases."

92. The finding, at page 61, line 13, that the slow downs had no discernible purpose other than to compel the publishers to meet the local's wage demands.

93. And the finding, at page 61, line 14, that the purpose of the slow downs could not have been to impose closed shop conditions or force publishers to agree to a closed shop contract.

94. The finding, at page 61, line 27, that the allegation concerning slow downs has not been proved.

95. The failure to find that the slow downs were in support of or as part of the other unfair labor practices.

96. The failure to find that the Respondents were responsible for the slow downs that occurred.

97. The failure to find that Respondents were guilty of violating Section 8 (b) (1) by virtue of their responsibility for the slow downs.

98. Any inferential finding at page 62, line 34, that there are "lull periods" in newspaper composing rooms.

99. The finding, at page 63, line 47, that "The evidence reflects that publishers generally have looked on the reproduction rule as simply one matter to be traded off in collective bargaining against other items of wages and hours."

100. The finding, on page 65, line 41, that the Local rejected this proposal, on precisely what grounds the record does now show.

101. And the failure to find that the Local rejected the proposal because it could not accept it under I.T.U. laws.

102. The failure to find that the publishers have looked upon the reproduction rule as calling for something completely wasteful and undesirable which they did not want but which they found efforts to change to be futile because of the Union's adamant insistence upon it as part of its general laws.

103. The finding, at page 65, line 54, "There is no evidence in the record to indicate that the reproduction clause in these forms (referring to general laws clause and conditions of employment and Form P 6A) were submitted as I.T.U. mandated 'must' clauses not subject to negotiations."

104. The failure to find that the reproduction clause, both directly and as included in the general laws clause, was a "must" provision of the conditions of employment and also P 6 A Form.

105. The conclusions, at page 66, line 6, that it is a matter of speculation as to what action or pressure, if any, Respondents would have authorized to enforce compliance with its reproduction ruling had the issue arisen.

106. In this latter connection the failure to find that a strike occurred at Rochester over a dispute relating to what had to be reproduced. (Record 4091).

107. The failure to find that since 1945 the inclusion of a clause incorporating I.T.U. general laws has been a "must" requirement of the I.T.U. in its dealing with publishers without exception.

108. The finding, at page 70, that the General Counsel has not sufficiently established that Respondents have engaged in activities made illegal by Section 8 (b) (6) including the subordinate findings and conclusions upon which such finding is predicated and particularly but not limted to: (1) The finding on page 69, line 17, that "this

then is not the 'clear case' that Congress sought alone to reach and the employees in this case not only work but render valuable services * * *."; and (2) the finding or conclusion that the employees here are performing services within the meaning of the word as used in Section 8 (b) (6) and, (3) the further finding or conclusion that Respondents have not attempted to cause an employer to pay money in the nature of an exaction for services not performed or that Respondents have caused an exaction within the meaning of the Section.

109. The conclusion, at page 72, line 13, that "Respondents have not engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act, by demanding or causing subordinate I.T.U. locals to demand clauses, phrases or provisions in contracts or agreements which would restrain or coerce employees in the exercise of their rights under Section 7 of the Act; by failing or refusing or causing subordinate I.T.U. local unions to fail or refuse to bargain collectively in good faith; or by engaging or causing subordinate I.T.U. locals to engage in slow downs in support of and as part of other unfair labor practices."

110. The conclusion that "Respondents have not engaged in unfair labor practices within the meaning of Section 8 (b) (6) of the Act, by demanding or requiring, directly or through subordinate locals, contract provisions or conditions providing for payment for reproducing advertising material."

111. The recommendation that the Complaint be dismissed with respect to all such allegations "as have been found in the Intermediate Report insufficiently supported in law or in fact" or as to any of such allegations.

112. The failure to recommend that the Complaint be supported in its entirety as to each and every allegation thereof.

113. The failure to enter a more specific recommendation as to the Order to be entered against the Respondents for not only the violations which have been found but the violations which should have been found in a manner to be more specifically set forth in a proposed Order to be submitted with a brief and argument herein.

114. The failure to specifically find that Respondents, by requiring or causing subordinate unions to require the

employment of union foremen, attempted to cause discrimination against employees in violation of Section 8 (b) (2).

115. The failure to specifically find that Respondents, by requiring or causing subordinate unions to require the employment of union foremen, restrained and coerced employees in violation of Section 8 (b) (1) (A).

116. The finding at Page 9, line 16, "Under the I.T.U. 'laws' six years apprenticeship training is a prerequisite to qualification for journeyman status," insofar as this may imply that such apprenticeship training is the only way journeyman status may be acquired.

117. All exceptions filed by the General Counsel in Case No. 13-CB-6 are incorporated as exceptions herein insofar as they may be applicable.

Respectfully submitted
For the General Counsel
Allen Sinsheimer, Jr.
Carroll L. Martin
Attorneys
National Labor Relations Board
Ninth Region

UNITED STATES OF AMERICA
Before the National Labor Relations Board

In the Matter of International Typographical Union, and its Agents Woodruff Randolph, Larry Taylor, Elmer Brown, and Don Hurd and American Newspaper Publishers Association	Case No. 9-CB-5

STATEMENT OF EXCEPTIONS

Comes now the American Newspaper Publishers Association by Elisha Hanson, William K. Van Allen, Arthur B. Hanson and Letitia Armistead, its attorneys, and pursuant to Section 203.46 (a) of the Rules and Regulations of the National Labor Relations Board files its exceptions to the Intermediate Report of Trial Examiner Arthur Leff dated August 6, 1948.

The American Newspaper Publishers Association excepts:

1. To so much of the finding in footnote 6, page 5, lines 55 and 56 as states that the pressmen, bookbinders, stereotypers and photoengravers withdrew from ITU "without objection from it."

2. To the finding at page 5, lines 30 and 31 that

> "The governing laws of the ITU consist of its constitution, bylaws and General Laws."

and to the failure of the Trial Examiner to find that

> "The governing laws of the ITU consist of its constitution, bylaws, General Laws and convention laws" (R. 3406).

3. To the finding at page 7, line 8, insofar as it states that the General Laws referred to were those "in effect [January 1 the preceding year]" and to the failure of the Trial Examiner to find that the General Laws referred to were those "in effect [the preceding January 1]" or those "in effect [January 1 of the current calendar year]."

4. To the finding at page 6, lines 47 through 50, with respect to the ITU General Laws that:

> "In practice such laws are adopted only after the

subject matter covered has won general acceptance in the industry, largely as a result of collective bargaining by the larger locals."

5. To the finding beginning at page 6, lines 53 and ending at page 7, line 1, that:

"It has long been traditional in the industry to consider the ITU General Laws as a part of every contract; indeed the obligation to observe pre-existing ITU laws was expressed in Nation-wide arbitration agreements between the ITU and the ANPA in force from 1901 to 1922."

6. To the finding at page 12, line 57, and page 58, line 39, that the delegates to respondent ITU's annual convention are "democratically elected."

7. To the failure of the Trial Examiner to find that the proposal made by the Chicago publishers on November 12, 1947, provided not only that "the issue as to whether there should be a stabilized contract for a 1-year term be submitted to the Chicago Federation of Labor for arbitration" (I.R. 25) but also that the publishers would accept and abide by the decision of the Executive Board of the Chicago Federation of Labor upon any unsettled working conditions and that "in case a deadlock should ensue on wages or related benefits the matter shall be submitted to arbitration for a binding decision" (Bd. Ex. 10-EE).

8. To the failure of the Trial Examiner to find that the Chicago publishers had reason to fear that if they were to make a wage offer, "the Union would post the wages in Conditions of Employment and forget about the framework" (I.R. 26).

9. To the failure of the Trial Examiner to find that on October 7, 1947, respondent Randolph issued a bulletin in which the local unions were instructed that:

"The scale negotiating committee shall bargain with the employer to determine if the employer will meet the requirements of the union as expressed by the membership in general terms. (See postcard bulletin No. 98.) No definite commitment on any single provision or section of any proposal of the employers or contained in any expired agreement should be made. The negotiating procedure will be for the scale negotiating committee to draw from the employer a figure and other conditions which will not be resisted

to the extent of a lockout. If such estimate by the committee is agreeable to the union then the conditions and provisions in the 'Conditions of Employment' shall be filled in or pasted onto the printed form" (Bd. Ex. 7-S).

10. To the finding at page 27, lines 55 and 56, that at Chicago

"employees could not be required to work overtime without their consent"

and to the failure of the Trial Examiner to find that the publishers at Chicago had the right to require their employees to work overtime.

11. To the finding at page 37, lines 8 through 11, with respect to events at Columbus, Georgia, that

"The General Counsel's representative conceded at the hearing, the record reflects, and it is found that the elimination of reproduction was not an issue in arriving at the decision to strike."

12. To the finding at page 39, lines 33 through 35, that the publishers at New York City objected

"principally to the unwillingness of the Local to enter into a binding agreement for more than 60 days."

13. To the finding at page 41, lines 53 through 56, that at New York City

"One newspaper had a number of varitypists engaged in promotional work unrelated to the printing of its newspaper; they were represented by another union and the local did not claim them"

and to the failure to find that respondent ITU

"claims jurisdiction over all duplicating machines, such as typewriters and varitypers, etc., the product of which is actually used in printing" (Resp. Ex. 16, page 109, General Laws, Art. VII, Sec. 1)

irrespective of whether the printing involved is printing of a newspaper or other printing.

14. To the statement at page 42, lines 20 through 22, that "It is only necessary to mention three of" the alterations ordered by the Executive Council in the tentative agreement reached at New York and to the failure of the Trial Examiner to make findings with respect to each alteration ordered by the Executive Council in its letter dated April 19 and received by the Local on April 20.

15. To the finding at page 44, lines 46 through 48, that at San Francisco

> "The local then reached an understanding with the publishers for a voluntary wage increase, without a contract, and that concluded the matter."

16. To the finding at page 45, lines 22 and 23, that each of the 10 strikes referred to "was authorized and approved by the ITU solely on the question of wages" and to the failure to find that wages were not the real cause of the strikes in question (Cf. I.R. 47, lines 8-11).

17. To the finding at page 45, lines 25 through 41, that a non-union man had been hired by a newspaper publisher at San Antonio, Texas, and to the failure of the Trial Examiner to find in accordance with Randolph's testimony that the non-union man hired at San Antonio was employed in a commercial printing shop.

18. To the finding at page 48, lines 23 through 25, that

> "It is clear from the record as a whole that P-6A was not designed as a legally enforceable closed-shop contract, was not represented as such, and was not so understood."

19. To the finding at page 52, lines 9 through 11:

> "Nor is it violative of 8 (b) (1) (A) for a labor organization 'to cause employers to pursue a course of refusing to deal with other employers who hire non-union printers'."

20. To the finding at page 52, lines 22 through 27, that

> "For an employer to refrain, or for a union to cause him to continue to refrain, as he has in the past, from doing business with non-union firms with whom he has no current contractual relations or business dealings, involves, as to the employees of the non-union firm, no unlawful restraint or coercion within the contemplation of Section 8 (a) (1) or 8 (b) (1) (A)."

21. To the finding at page 52, lines 41 and 42, that

> "Section 8 (b) (2) was designed to cover situations of direct union pressure applied against a particular employer."

22. To the finding at pages 51 and 52 that respondents' insistence upon clause (g) of Form P-6A did not constitute a violation of Section 8 (b) (1) (A) of the Act.

23. To the finding at page 52 that respondents' insistence upon clause (g) of Form P-6A did not constitute a violation of Section 8 (b) (2) of the Act.

24. To the finding at page 53, lines 3 to 12, inclusive, that clause (f) of Form P-6A did not violate Section 8 (b) (2) of the Act.

25. To the conclusion at page 53, lines 29 through 36, that

> "It is only when a union engages in a 'jurisdictional strike' within the meaning of Section 8 (b) (4) (D), or when it seeks to force employees unorganized by it into membership into its union, or (where not warranted) into its bargaining unit, that it runs afoul of the Act. Here, * * * There is no problem of a 'jurisdictional dispute' in the traditional sense, since no other union is competing with ITU for work over which it asserts jurisdiction."

26. To the finding at page 53, lines 36 through 40:

> "And there is no proof that the ITU is seeking to interfere with the self-organizational rights of non-union employees in other trades, crafts or classes, or that it is attempting to cause employers to discriminate against non-union employees to encourage or discourage membership in any labor organization."

27. To the finding at page 54, lines 19 through 21, that:

> "It is thus clear that the ITU was not seeking the inclusion of these non-union employees in its unit or union."

28. To the finding at page 54, lines 21 through 25, that the object of the Jurisdiction clause in the Proposed Contract Provisions was

> "to provide assurance, in the event that varityping equipment was substituted for the present processes in the printing of newspapers, that employees in the ITU unit who would otherwise be displaced, would be assigned to work on such substitute equipment."

and to the failure of the Trial Examiner to find that the object of this provision was to prevent the hiring of persons who were not members of respondent ITU.

29. To the finding at page 54 lines 49 through 52, that respondents' post injunction conduct was developed solely in connection with the New York City negotiations and that

"There is no other evidence in this record to indicate how the ITU general instructions were actually applied."

30. To the conclusion at page 56, lines 26 through 34, that

"The fact that the competency clauses, if agreed to in the precise form requested, might conceivably at some future date be illegally interpreted and applied to cause a violation of Section 8 (a) (3), does not support a finding of a present violation. If and when the Respondent's conduct should unequivocally disclose that competency clauses are to be utilized to maintain closed-shop conditions, or otherwise to cause an employer to violate Section 8 (a) (3), then will be time enough for the Board to intervene."

31. To the finding beginning at page 56, line 48 and ending at page 57, line 13 that

"Where, as here, it appears that the union foremen are bound by oath to 'use all honorable means to procure employment for members * * * in preference to others,'[59] a showing that a union required, as a condition to a contract settlement, that only its foremen members be permited to hire may be evidence—although not necessarily conclusive—[60] of an attempt, illegal under Section 8 (b) (2), to cause an employer to discriminate against non-union men in hiring. Such a showing is, however, lacking in this case. At New York City, the only locality at which injunction conduct was reviewed at the hearing, the record discloses that the formal proposal made by the New York Local omitted the foreman clause referred to above. Although a foreman clause in a modified ofrm (to which the ITU did not object) did appear in the New York contract which was thereafter tentatively agreed upon, the record does not disclose under what circum-

[59] Although Randolph testified at one point that since the passage of the amended Act, he considered ITU foremen no longer bound in this respect, he admitted that no notice was given to members that they were no longer obliged to carry out or fulfill that oath.

[60] As has been noted, certain ITU approved agreements contain clauses providing that a foreman shall not be subject to disciplinary action by the Union for any act in the performance of his duties as foreman.

stances or at whose instance it was inserted.[61] On this record, it cannot be concluded, therefore, that Respondents during the post-injunction period engaged in an actual violation of Section 8 (b) (2)"

and to the failure of the Trial Examiner to find that the formal proposal made by the New York local on March 31, 1948, included a provision that

"Employees shall be employed, receive orders from, disciplined, laid off and discharged by the foreman and by none other" (Bd. Ex. 99, page 5).

A further exception is taken to the failure of the Trial Examiner to find that on April 2, 1948, the New York publishers proposed in writing that the contract provide that no foreman may be disciplined by the Union for any act as foreman (Bd. Ex. 101, page 3) and that the union refused to agree to such a provision.

32. To the statement at page 57, lines 11 through 13, that:

"On this record it cannot be concluded, therefore, that Respondents during the post-injunction period engaged in an actual violation of Section 8 (b) (2)."

33. To the finding at page 61, lines 4 through 6, that slow downs were neither planned or contemplated as part of the ITU 1947 convention program and to the failure of the Trial Examiner to find that subordinate unions were expected to engage in strikes and slow-downs unless the publishers gave in to their illegal demands.

34. To the finding at page 61, lines 13 and 14, that

"The slow-downs had no discernible objective other than to compel the publishers to meet the local's wage demands"

and to the failure of the Trial Examiner to find that the objective of the slow-downs was to obtain a wage increase without a contract in accordance with respondents' over-all policy.

35. To the finding beginning at page 60, line 27, and ending at page 61, line 4, that respondents were not re-

[61] As modified, the foreman clause did not specifically require that foremen alone should have authority to hire, but provided that "the operation, authority, and control of each composing room shall be vested exclusively in the office through its representative, the foreman, who shall be a member of the Union." The same clause set forth the priority rules which "the foreman must recognize" in hiring, and provided that "foremen may not exclude as candidates for employment any individuals who establish competency."

sponsible for the occurrence of slow-downs and to the failure of the Trial Examiner to find that the slow-downs were caused by respondents and that respondents were responsible for them.

36. To the recommendation at pages 60 and 61 that so much of the complaint be dismissed as alleges that respondents violated Section 8 (b) (1) (A), by engaging in and causing subordinate unions to engage in slow-downs in support of, or as part of, the other unfair labor practices.

37. To the failure of the Trial Examiner to find that respondents engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act by engaging in or causing subordinate local unions of respondent ITU to engage in "slow downs" in support of, and as part of, the other unfair labor practices alleged in the complaint.

38. To the finding at page 62, lines 32-34, that

> "Live matter is always given priority in the composing room. Wherever possible, an effort is made to have bogus work performed during the lull period."

39. To the failure of the Trial Examiner to find that bogus is frequently set in preference to matter which is to appear in the newspaper (R. 4124, 4120); that there have been no lull periods or dead periods in composing rooms for several years: that publishers throughout the country are required to employ printers at overtime rates to publish their newspapers; that respondent Randolph did not know of any place in the United States where the union was able to supply sufficient printers to publish a newspaper at straight time rates (R. 3476) and that respondent Randolph did not know of any city in which large amounts of overtime were not being paid to regular situation holders (R. 3468).

40. To the finding at page 65, lines 1 through 3, with respect to Columbus, Georgia, that

> "there is no evidence that the publisher voiced any objection with regard to reproduction between August 15, 1947 when negotiations began, until February 8, 1948"

and to his failure to find in accordance with the uncontradicted testimony of witness Chapman that the publisher asked for the elimination of reproduction on many occasions prior to February 8 (Bd. Ex. 75-C, p. 613).

41. To the finding at page 65, lines 6 through 10, with respect to the strike at Columbus, Georgia, that:

> "When the Union went out on an ITU authorized strike shortly thereafter, the elimination of reproduction was not, as the record reflects and as the General Counsel agreed, an issue in the strike, nor in the Union's decision to strike."

42. To the finding beginning at page 65, line 54, and ending at page 66, line 2, that

> "there is no evidence in the record to indicate that the reproduction clause in these forms were submitted as ITU mandated 'must' clauses not subject to negotiation."

43. To the statement at page 66, footnote 84, lines 55 through 58, that

> "Significantly, the issue of reproduction was not made an issue in the Columbus, Georgia, strike. At Chicago, upon expiration of the contract on October 21, 1947, the publishers discontinued reproducing matter."

44. To the finding at page 66, lines 6 through 9, that

> "On the record of this case it thus remains a matter of speculation as to what action or pressure, if any, the Respondents would have authorized to enforce compliance with its reproduction rule, had the issue arisen."

45. To the entire paragraph beginning at page 68, line 54, and ending at page 69, line 8.

46. To the finding at page 70, lines 14 through 16, that

> "What means of pressure, if any, Respondents would have authorized if an employer otherwise willing to come to terms with a local, had refused to yield to reproduction, the record does not disclose."

47. To the finding at page 70, lines 42 through 46, that the General Counsel has not "sufficiently established that respondents engaged in activities made illegal by Section 8 (b) (6)."

48. To the failure of the Trial Examiner to find that respondents have engaged in unfair labor practices within the meaning of Section 8 (b) (6) of the Act by causing and attempting to cause employers to pay money in the nature of an exaction for services which are not performed or not to be performed.

49. To the failure of the Trial Examiner to find that respondents have engaged in unfair labor practices within the meaning of Section 8 (b) (2) of the Act by:

(a) Demanding and requesting the insertion of clauses (a) to (i), inclusive, and Sections 20-22, 24-26, 35 and 36 of Form P-6A in contracts or agreements.

(b) Instructing, requiring and directing subordinate unions of respondent ITU to demand and request the insertion of clauses (a) to (i), inclusive, and Sections 20-22, 24-26, 35 and 36 of Form P-6A in contracts or agreements.

(c) Since March 27, 1948, demanding and requesting the insertion in contracts or agreements of those clauses contained in the PROPOSED CONTRACT PROVISIONS OF A SPECIFIC NATURE under the headings JURISDICTION, EMPLOYMENT, STATEMENT OF INTENT, ALTERNATE PROPOSAL OF STRUCK WORK, I.T.U. LAWS, LOCAL UNION AND CHAPEL RULES, PICKET LINE, LIMITATION OF LIABILITY, APPRENTICES, Section 35 and Section 36.

(d) Since March 27, 1948, instructing, requiring and directing subordinate unions of respondent ITU to demand and request the insertion in contracts or agreements of those clauses contained in the PROPOSED CONTRACT PROVISIONS OF A SPECIFIC NATURE under the headings, JURISDICTION, EMPLOYMENT, STATEMENT OF INTENT, ALTERNATE PROPOSAL OF STRUCK WORK, I.T.U. LAWS, LOCAL UNION AND CHAPEL RULES, PICKET LINE, LIMITATION OF LIABILITY, APPRENTICES, Section 35 and Section 36.

(e) Demanding and requesting that publishers operate their composing rooms in accordance with the General Laws of the ITU.

(f) Instructing, requiring and directing subordinate unions of respondent ITU to demand and request that publishers operate their composing rooms in accordance with the General Laws of the ITU.

(g) On April 19, 1948, ordering changes in the tentative agreement arrived at by the Scale Committee of Local No. 6 and the New York City publishers and by failing and refusing to approve said agreement.

(h) Requiring that foremen of ITU organized offices be union members with complete control over such matters as assignments to work, discipline, and layoffs.

(i) Insisting and by instructing, requiring and directing subordinate unions to insist that publishers give ITU members the right to engage their own substitutes.

(j) Seeking to establish a "tradition" that ITU members would work only with union men and to his failure to recommend that respondents notify their members that no such "tradition" exists and that the members of respondent ITU are perfectly free to work with non-union men.

50. To the failure of the Trial Examiner to find that by the acts set forth in paragraph 49, supra, respondents have engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.

51. To the failure of the Trial Examiner to find that respondents have refused to bargain collectively in good faith and have thereby restrained and coerced employees in the exercise of rights guaranteed in Section 7 of the Act and have thereby engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) by the acts set forth in paragraph 43, supra, and by

(a) Demanding and requesting the 60-day cancellation clause in Form P-6A.

(b) Instructing, requiring and directing subordinate unions of respondent ITU to demand and request the 60-day cancellation clause in Form P-6A.

(c) Demanding and requesting that publishers operate their composing rooms in accordance with so-called Conditions of Employment.

(d) Instructing, requiring and directing subordinate unions to demand and request that publishers operate their composing rooms in accordance with so-called Conditions of Employment.

52. To the failure of the Trial Examiner to find that respondents engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) and (B), 8 (b) (2) and 8 (b) (6) of the Act after March 27, 1948.

53. To the failure of the Trial Examiner to find that respondent ITU was and is a bargaining representative of employees employed in the composing rooms of a sub-

stantial number of newspapers within the meaning of Section 9 (a) of the Act.

54. To the failure of the Trial Examiner to find that respondents have failed and refused to bargain collectively on behalf of the employees employed in a substantial number of composing rooms and has thereby engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.

55. To the failure of the Trial Examiner to find that respondents by failing and refusing to bargain collectively have restrained and coerced employees in the exercise of rights guaranteed in Section 7 of the Act and have thereby engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.

56. To the failure of the Trial Examiner to find that respondents have failed and refused to bargain collectively in violation of Section 8 (b) (1) (A) of the Act.

57. To the failure of the Trial Examiner to make findings with respect to respondent ITU's pension and mortuary fund and to his failure to find in accordance with uncontroverted evidence in the record that for many years members of respondent ITU have been required to contribute 2½% of their earnings (temporarily 2%) to the union's pension and mortuary fund; that members who withdraw from the union or who are expelled lose all rights in the fund and are not permitted to recover monies paid into the fund; that members who are suspended lose valuable rights in the fund; that members of ITU have a substantial interest in preserving their status as members in good standing; and that this financial interest is utilized to compel adherence to ITU laws.

58. To the failure of the Trial Examiner to find that respondents have not filed the affidavits or reports required by Sections 9 (f), (g) and (h) of the Act.

59. To the failure of the Trial Examiner to find that at no time did respondents indicate which of their laws they considered to be "in conflict with law."

60. To the failure of the Trial Examiner to find that in requesting, demanding and insisting upon contract clauses providing

> "That the General Laws of the International Typographical Union in effect January 1, 1947 [or 1948], not in conflict with law or this contract, shall govern relations between the parties on conditions not specifically enumerated herein."

respondents attempted to cause publishers to operate their composing rooms in accordance with the General Laws in their entirety.

61. To the failure of the Trial Examiner to find that, by giving effect to the constitution, by-laws and general laws of respondent ITU, respondents have engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) and (B), 8 (b) (2), and 8 (b) (6) of the Act.

62. To the failure of the Trial Examiner to find in accordance with the testimony of respondent Randolph that respondents and their local unions have never bargained with respect to ITU laws (Bd. Ex. 80-A, page 780); that respondents have taken the position that ITU laws are not subject to change by the process of collective bargaining and have never retreated from that position (ibid., page 782); that when local unions enter collective bargaining it is taken for granted by the locals and by respondents, that if a contract is to ensue it will contain such matters as are in accord with ITU laws and approved as such by respondent Randolph (ibid., page 782); and that by virtue of the foregoing facts respondents have engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.

63. To the failure of the Trial Examiner to find that respondents have engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act by failing and refusing to bargain with respect to ITU laws, rules and decisions and by instructing, requiring and directing subordinate unions to fail and refuse to bargain with respect to ITU laws, rules and decisions.

64. To the failure of the Trial Examiner to recommend that respondents cease and desist from insisting upon the adoption or acceptance by publishers of ITU laws, rules and decisions without bargaining with respect to them.

65. To the failure of the Trial Examiner to recommend that respondents

(a) Cease and desist from insisting on a laws clause.

(b) Cease and desist from giving effect to ITU laws in conflict with the National Labor Relations Act, as amended.

(c) Rescind all ITU laws (including any provisions in the Constitution, By-Laws, General Laws or

Convention resolutions) that are in conflict with provisions of the Labor Management Relations Act or that have been used or may be used to thwart such Act.

(d) Notify the ITU membership of such rescission.

The charging party hereby adopts and relies on the exceptions filed simultaneously in this proceeding by representatives of the General Counsel. Furthermore, the charging party incorporates herein by reference its exceptions in Case No. 13-CB-6 insofar as they may be applicable to this proceeding.

Wherefore, the Board is respectfully requested to set aside the findings, conclusions and recommendations excepted to above and to make findings and conclusions in accord with the facts in the record and in conformance with the Act. It is further requested that the Board find that respondents have violated Section 8 (b) (1) (A) and (B), 8 (b) (2) and 8 (b) (6) of the Act and issue an appropriate order so as to effectuate the policies of the Act.

Respectfully submitted,

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October 15, 1948.

UNITED STATES OF AMERICA
Before the National Labor Relations Board

In the Matter of International Typographical Union, et al and American Newspaper Publishers Association	Case No. 9-CB-5

STATEMENT OF EXCEPTIONS TO INTERMEDIATE REPORT OF TRIAL EXAMINER, INCLUDING PROPOSED REVISIONS THEREOF, OF INTERVENER SOUTHERN NEWSPAPER PUBLISHERS ASSOCIATION

Intervener Southern Newspaper Publishers Association excepts as follows to the Findings of Fact, Conclusions of Law and Recommendations set forth in the Intermediate Report of the Trial Examiner:

(1) Page 41, Following the Period in Line 15: Exception is taken to the failure to find further as follows:

"Victory, President of Local 6 at this point declared: 'Let's get at it; let's get somewhere; we are free now.'" (Tr. 3780-3784).**

(2) Page 43, Following the Period in Line 44: Exception is taken to the failure to find further as follows:

"The publishers' representatives then proposed to Local No. 6 the immediate resumption of negotiations. However, Victory declared that he could not enter into them because he was unable to understand the situation." (Tr. 3823-3824).

(3) Page 45, Lines 20-24: Exception is taken to these findings and to the failure to find instead as follows:

"In contrast to previous years, when strikes in newspaper composing rooms were rarities (Bd. Ex. 80-D, p.

** All double spaced matter and incorporated quotations constitute proposed revisions of the Intermediate Report. Parenthetical references beginning with the abbreviation "Tr." are to the transcript; those beginning with "Bd.Ex." are to exhibits of the General Counsel; those beginning with "R. Ex." are to Respondents' exhibits.

56), there have been many since the initiation of the so-called collective bargaining policy outlined above. (Tr. 3135-42). In other instances the threat of a strike was used as a means of enforcing compliance with Respondents' policy. (Tr. 3256, 3376-81). Without exception, the striking locals have acted in accordance with that policy (Tr. 3515). In February of 1948 Respondent Union raised its 'assessment for its strike benefit fund from one-half percent to five percent of the members' wages.'' Tr. 4002).

(4). Page 51, Line, 36, Through Page 52, Line 47, Including Footnotes: Exception is taken to these findings and to the failure to find instead as follows:

4. Additional Violations of Sections 8(b) (1) (A) and 8(b) (2)

(a) Struck Work

Another violation of Section 8(b) (1) (A) was occasioned by Respondent's orders that a "struck work" clause be enforced against newspaper publishers.

So far as pertinent here, Section 8(b) (1) (A) forbids unions to coerce or restrain employees in the exercise of rights guaranteed by Section 7, which provides as follows:

"RIGHTS OF EMPLOYEES

"Sec. 7. Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a) (3).' "

The issue at hand arises primarily from Article III, Section 5, of the laws of Respondent Union (R. Ex. 17, p. 103) and paragraph (g) of the 60 day contract proposal known as P-6A (Bd. Ex. 7-Q), which respectively declare:

"Article III. Section 5. Subordinate unions at all times have the right to define struck work composition executed wholly or in part by non-members and composition or other work coming from or destined for printing concerns which have been declared by the

union to be unfair, after which union members may refuse to handle the work classified as struck work."

* * *

"The party of the first part agrees not to require its employees to perform work on composition or other work executed or to be further worked on wholly or in part by employees working under sub-standard conditions as defined by the party of the second part . . ."

As has heretofore been noted [p. 24 supra],* the enforcement of the asserted right to refuse to work on non-union goods was proclaimed by Respondent Randolph to be one of the three cardinal elements of the policy being enforced by Respondents and one which the ITU would not surrender. Respondents forcefully implemented this threat. Their communications accompanying P-6A specifically ordered subordinate unions to enforce absolute submission to clause (g) and expressly warned publishers of the penalties of non-compliance, as follows (Bd. Ex. 7-P, 7-T):

"The . . . sections on the first page (a) to (i) inclusive are absolutely necessary. Do Not Change Them In Any Way.

* * *

CONTRACT PROPOSAL ONLY FOR 60-DAY DURATION.

The right to terminate on 60-day notice is absolutely essential because:

It puts the employer in position where he is likely not to have union employees working for him if he hires non-union men; if he brings in non-union matter for you to work on or if he tries to take away your jurisdiction. (Emphasis supplied.)

The reason we adopted a 'no contract' policy was to protect ourselves aaginst the above acts which the employer could perform to our destruction."

The manifest purpose of the "struck work" clause is to protect ITU members from the competition of non-union printers by exerting pressure upon the latter's employers

* Bracketed references in the text signify references to the Intermediate Report of the Trial Examiner.

to switch to union help. The ultimate objective can only be the elimination of the non-union printer. When he ceases to exist, the struck work clause will be superfluous.

The heavy impact upon non-union printers of Respondents' enforcement of the struck work clause is not to be minimized. By far the greater proportion of the nation's important newspaper composing rooms are manned exclusively by ITU members. Hence, the effect of a combination between Respondent Union and its employers to boycott non-union shops necessarily constitutes a powerful determent to the employment of non-union printers. The conclusive proof, indeed, is the importance which Respondents attach to the clause. It follows that the enforcement of the struck work clause is a grave restraint upon the exercise by non-union employees of their right under Section 7 to refrain from collective activities. The fact is that the gravest possible impairment of the enjoyment of that right is involved—namely, exclusion from the trade. The right is meaningless if it is to go unprotected against such a threat.

Nor can there be any doubt of the present reality of the restraint on account of Respondents' conduct. Respondents rated the asserted right to refuse to work on non-union goods as no less essential to the effectuation of their policy than the claimed privilege to refuse to work with non-union men and adopted exactly the same measures to enforce the struck work clause as they directed towards the preservation of the closed shop. The widespread success of Respondents in enforcing their so-called "collective bargaining" policy—[see pp. 44-45, supra]—establishes that the prohibited restraint inherent in their struck work program is already in actual effect through most of the newspaper publishing industry.

It is of no moment in this connection that the complaint did not specifically allege a violation of 8(b) (4). Nor would it be immaterial that no precise proof may have been directed to establishing a violation of 8(b) (4). Plainly, the primary object of the protection of 8(b) (4) is the employer, the evident purpose of the provision being to protect him from the hazards of work stoppages stemming from the Union conduct thereby prohibited. And, considering the related mandatory injunction provisions of section 10(e), it may be that section 8 (b) (4) comes into play

only upon a showing that a strike of the forbidden type is imminent or in progress. The suggested statutory design is to strengthen the hand of employers in resisting the specified types of unlawful union conduct.

But Section 8 (b) (1) (A), on the other hand, is directed towards protecting employees against improper activities by labor organizations. And it condemns all coercion or restraint of the rights guaranteed by Section 7, whatever the form or instrumentality employed. It reach is not to be shortened by removing from its coverage all labor union activities designed to achieve the purposes condemned by 8(b) (4). The intended victims in such cases are non-union employees or members of other unions; the employer is only the instrumentality. And strikes are not the only means which labor organizations may employ to achieve the forbidden result. For example, bribery may be used. Another potential weapon is apparent from this very record. Thus, because of the existing shortage of qualified printers in recent years, heavy overtime in the composing room has been necessary to publish newspapers. [See p. 62, infra]. The simple refusal to perform overtime therefore constitutes an effective way of applying pressure against newspaper publishers, and has in fact been invoked by members of Respondent Union. [See p. 27, supra].

Finally, such a limitation of 8(b) (1) (A) would place beyond the pale of the law, the most dangerous threat to the rights guaranteed by Section 7—a combination by a labor organization and its employers to work the forbidden result. This might be occasioned either because of the employer's preference for one union as against another or, as is evidenced by Respondents' success in the present case, because he could not stand the strain of the contest which resistance to the aggressor union would provoke.

In short, the excision from Section 8(b) (1) (A) of all union conduct designed to achieve the purposes banned by 8(b) (4) would leave a gaping hole in the protection accorded employees against labor union interference with their rights under the statute. Such a construction would be incompatible with the legislative plan to make labor organizations as well as employers, responsible for the invasion of those rights.

The lack of past NLRB decisions condemning employers

for entering into struck work clauses in nowise rebuts the soundness of the conclusion that they are now forbidden. The reason is that the employee's right to refrain from collective activities was first accorded statutory recognition with the passage of the Taft-Hartley Law. Until then, employers and labor organizations were not precluded from restricting an employee's freedom to refrain from such activities, as witness the legality of the closed shop agreement under the original Wagner Act.

It need not be decided here whether the voluntary act of an employer in refraining from dealing with non-union shops (or union shops) would constitute an unfair labor practice. Presumably it would not, in line with the traditional recognition under the antitrust laws and kindred legislation of the right of the trader to deal with whom he chooses, so long as the selection represents his independent decision and is not made in concert with others. The principle was stated this way by the Supreme Court in respect of a charge of unfair competition under the Federal Trade Commission Act. (FTC *v.* Raymond Bros., Clark Co., 263 U.S. 565, 572-3, 44 S. Ct. 162, 163-4):

> "The gravamen of the contention in behalf of the Commission is that the conduct of the Raymond Company, acting alone and not in combination with others, in threatening the withdrawal of patronage from the Snider Company if it continued to sell goods to the Stores Company, constituted an unfair method of competition oppressive in its character, unlawful when tested by common law criteria, and having a dangerous tendency unduly to hinder competition."
>
> • • •
>
> "A different case would of course be presented if the Raymond Company had combined and agreed with other wholesale dealers that none would trade with any manufacturer who sold to other wholesale dealers competing with themselves, or to retail dealers competing with their customers. An act lawful when done by one may become wrongful when done by many acting in concert, taking on the form of a conspiracy which may be prohibited if the result be hurtful to the public or to the individual against whom the concerted action is directed."

The same distinction is pertinent with respect to the

issue here. Where the determination whether to deal with non-union shops is left to the independent determination by the employer, the restraint, if any, is in no sense absolute. The non-union employer and his employees are free to challenge and overcome it by persuasion, superior work, or price competition. But when a contractural struck work clause is operative, the restraint is in fact complete and inflexible. The market is closed. Where, as here, such agreements would be nationwide and so all-inclusive, the result is to foreclose substantially the employment opportunities of non-union printers, and thus to force them to engage in collective activities; solely because of a nationwide combination between a dominant labor organization and the great bulk of the country's newspapers. No such combination can be countenanced unless the statutory guarantee to refrain from collective activities is to be disregarded.

Nor is it of moment that the immediate motivation for a struck work clause is to enable union members to obtain better economic terms from their own employers. 'A restraint of the right [to be non-union] cannot be justified by the fact that the object of the participants in the combination was to benefit themselves in a way which might have been unobjectionable, in the absence of such restraint (Anderson v. Shipowners' Ass'n. of Pacific Coast, 272 U.S. 359, 363, 47 S. Ct. 125, 126).'

It follows that by enforcing and attempting to enforce struck-work conditions and clauses in the newspaper publishing industry Respondents committed unfair labor practices within the meaning of Section 8(b) (1) (A) of the Labor Management Relations Act of 1947.

(5) Page 53, Line 25, Through Page 54, Line 38:

Exception is taken to these findings and to the failure to find instead as follows:

"The key to Respondents program with respect to jurisdiction is found in the ITU Constitution which provides that the Union shall exercise "complete and unrestricted authority to define its jurisdiction" (R. Ex. 17, p. 5), and specifically declares such jurisdiction to embrace all branches of the printing and kindred trades, including those over which the ITU has yielded jurisdiction by agreement with other unions, in the event the ITU Executive Council should deem such recapture necessary. (R.

Ex. 17, p. 3). These constitutional clauses are supplemented by various provisions of the general laws. The latter proclaim it "The unalterable policy" of the union that its jurisdiction shall cover all composing room work or machines or processes employed for printing or in preparation therefor and direct that non-members now controlling any such matter be supplanted by ITU members. (R. Ex. 17, p. 104). Specific claim is made of jurisdiction over teletypesetters and "over any duplicating machines, such as typewriters or varitypers, etc.", the product of which is actually used in printing. (R. Ex. 17, pp. 109, 110).

In short, by its Constitution and supplementary laws Respondent Union reserves the right to determine unilaterally the work and processes for which publishers must employ its members.

Compulsion upon employers to recognize this one-sided Union prerogative was an integral part of the previously described ITU policy as enforced by the individual Respondents. The preservation of unrestricted ITU dominion over jurisdiction was expressly declared by Randolph to be the third of the principal objectives of ITU policy, [See p. 24, supra]. The Conditions of Employment expressly prescribed blanket obedience to ITU law as the sole terms on which ITU members would work. The pertinent provisions of Form P-6A disclose that it contemplated the same thing. Its paragraphs (a) and (d) made the ITU the exclusive bargaining agent for employees subject to its jurisdiction and bound the employer "not to assign any work traditionally performed by journeymen and apprentice printers to any employee other than journeymen and apprentice printers, as defined by the party of the second part"—namely the Union. And in the event of disagreement as to what work was traditionally performed by printers there could be no recourse to any outside agency to resolv the dispute. Moreover, by paragraph (c) of P-6A, the Union's laws on jurisdiction were binding, since that was a matter specifically covered by the terms of P-6A, so that the exception of those which 'were in conflict with law' was inapplicable to that subject.

The 60 day clause of P-6A, moreover, was the weapon to be invoked if there was any resistance by an employer to

the Union's claims as to jurisdiction. As set forth in the memorandum which Respondents transmitted with P-6A, the right to terminate on 60 days notice was 'absolutely essential because it puts the employer in position where he is likely not to have union employees working for him . . . if he tries to take away (ITU) jurisdiction.' (Bd. Ex. 7-T).

In other words, Respondents backed their requirement of recognition of the ITU's unilateral power to determine its own jurisdiction with exactly the same force which they put behind their edicts that closed ITU shops be continued and that struck work clauses be enforced. Publishers were put on notice that the ITU claimed blanket jurisdiction over any techniques or processes which might be substituted for customary composing methods, regardless of whether ITU members were qualified, and that the employment of anyone else would be met with a walkout.

The necessary and intended consequence was to discourage publishers from introducing new composing room methods and to foreclose the employment opportunities of non-members of the ITU where changes in the printing art had been adopted. That such discriminatory effects are not mere speculative possibilities is apparent from the widespread use now being made of the varitype-photo engraving process, particularly where ITU strikes are in progress or are threatened. Typists, not printers, possess the skill for this technique. But as is concretely shown by the New York negotiations, Respondents' policy forbade the employment of non-ITU typists who are qualified and required the employment of ITU printers whether or not qualified.

A union, of course, is entitled to bargain collectively for an agreement defining its jurisdiction. But this was not Respondents' aim. In the first place, they were not concerned with achieving an agreement defining ITU jurisdiction, but with a purported agreement under which employers would surrender to the Union alone the determination of what work would be performed by its members. Secondly, Respondents were not in fact interested in achieving any agreement. As has already been determined [See pp. 48-49, supra], the Conditions of Employment form and the 60 day clause of P-6A were both designed purely as 'a continuing threat' to compel submission to Respond-

ents' dictates. They were no less designed to preclude encroachment upon the ITU's claimed unilateral prerogatives in respect of jurisdiction than to force the continuance of closed shops. This is not what is meant by collective bargaining as used in the statute. As this Board has already made plain (In the matter of Inland Lime & Stone Co., 24 NLRB 758, 771-772):

> 'The maintenance of an absolute right of unilateral action necessarily precludes the making of any agreement, oral or written, because an agreement by its nature limits in some degree the parties scope of unilateral action in contravention of the agreed terms. The respondents insistence upon the preservation of complete freedom of action even where a basis for an accord existed establishes, and we find that it participated in the discussions with the Union with a fixed intention not to agree to any proposal irrespective of whether the proposed terms were otherwise acceptable.'

See also Singer Mfg. Co. *v.* National Labor Relations Board, 119 F. (2d) 131, 138 (C.C.A. 7th, 1941).

Nor is it material that only a few publishers or none at all contested Respondents' policy on the specific issue of jurisdiction. In the first place, the illegal closed shop features were naturally the main point of resistance and constituted a barrier to the particularized consideration of subsidiary issues. Secondly, as was found with respect to the closed shop issue, (p. 49, supra) the determination whether there has been 'an attempt to cause' discrimination in violation of 8(b) (2) is not dependent upon a showing that somebody resisted and was forced to submit. Such a test would presuppose the untenable proposition that unlawful conduct is significant only where it fails or excites opposition, but is immaterial where it succeeds. Cf. International Association etc. v. National Labor Relations Board, 311 U. S. 72; 61 S. Ct. 83. It would not mitigate the refusal of an employer to bargain that he compelled surrender to his terms by economic intimidation. Superior Tanning Co., 14 NLRB 942; enforced National Labor Relations Board *v.* Superior Tanning Co., 117 F. (2d) 881, 891 (C.C.A. 7th, 1940); and certiorari denied, 313 U.S. 559, 61 S. Ct. 834; Reed & Prince Manufacturing Co., 12 NLRB 944, 961; Cowell Portland Cement Company, 8

NLRB 1020. Neither is Respondents' conduct defensible on the theory that they compelled submission to their terms through economic duress. As the Court said in the Superior Tanning case, supra: 'It is impossible to endorse the argument that the legality of contracts in labor cases is determined solely from the terms of the contracts themselves.' (117 F. (2d) at 891).

Respondents' insistence upon the unilateral right of the ITU to define its own work jurisdiction must therefore be condemned as an independent violation of 8(b) (2) of the statute."

(6) Page 54, Line 40, Through Page 58, Line 13: Exception is taken to these findings and to the failure to find instead as follows:

"(d) Post Injunction Conduct

After the issuance of the injunction of March 27, 1948 [see p. 40, supra], Respondents, declaring their intention of complying with the decree, first issued new instructions to their subordinate unions and then a set of clauses to be incorporated in any subsequent contracts. (Bd. Exs. 83, 85). Authority was granted to sign contracts for a one year duration and several charges were made in certain of the provisions of clauses (a) to (i) of Form P-6A. But emphatic warning was given that the rules requiring the prior submission to the Executive Council of any proposals would be rigorously enforced.

Among other things, the revised clauses approved by Respondents included one headed "Jurisdiction" which provided in pertinent part as follows, (Bd. Ex. 85):

'The work of the composing room shall be performed only by journeymen and apprentices. Apprentices may be employed only in accordance with the ratio of apprentices to journeymen provided in Section 19 of this contract. Since it is the desire and intent of the parties to assure, insofar as possible, the continued maintenance of a high degree of skill in the journeymen classifications and a correspondingly high degree of quality and quantity of production, it is mutually agreed that journeymen are defined as (1) employees who have completed approved apprentice training as provided in this contract; (2) Journeymen members of the Union; or (3) Applicants for work in a composing room who upon reference to the joint

examining board by the party of the first part secure a certificate of competency duly issued under procedures established by the joint examining board. The joint examining board shall be composed of two representatives of the Union who shall give such applicants for work the same degree of examination for competency as is given to apprentices seeking to qualify as journeymen.'

Another proposed stipulation headed "Employment" read as follows:

'It is agreed that all foremen of composing rooms shall be members of the union in good standing. Composing room employees shall be employed, receive orders from, laid off and discharged by the foreman and by none other. In the absence of the foreman he shall designate and post who will be the foremen during his absence; provided, that nothing in this section shall interfere with instructions being given by others for the proper execution of a job, when same is deemed necessary by the foreman.'

As to 'struck work', the essence of the revised proposal was a requirement of a statement of the 'intent' of the employer to limit composing room work to jobs obtained on a 'normal account' basis.

The first quoted clause on its face contemplates discrimination against non-union printers. By its terms ITU members automatically qualify for employment upon presentation of a membership card, whereas others must undergo burdensome examinations. The distinction is not merely a matter of greater inconvenience to the non-union printer. It involves dollars and cents and could conceivably make the difference between getting a job and doing without one. The ITU member may fill a vacancy simply by presenting a card. The non-member must endure a payless time-lag while he takes the examination. Furthermore, while the latter awaits examination and certification, an ITU member may present himself and beat him to the job. Such possibilities, moreover, are heightened by the requirements that the Union enjoy equal representation on the examining board (without any provision of a tie-breaker in case of a deadlock) and that foremen shall be Union members with control over hiring and discharge.

The enforcement of this type of system is no less vio-

lative of 8(b) (2) than the attempted perpetuation of a closed shop. The system is not saved by the circumstance that it does not absolutely preclude the employment of non-union printers. The Taft-Hartley law does not recognize any second class employees. It forbids discrimination in the hiring process as well as absolute exclusion from employment. The duty imposed upon employers by Section 8(a) (3), and safeguarded against union impairment by 8(b) (3), is to accord equality of opportunity for employment to all—not better opporunities for some and worse ones for others. It is no answer that the protection of the standards of the craft may be a legitimate concern of a union. This can be readily accomplished without the interjection of preferential hiring clauses—as, for example, by the establishment of objective tests of skill equally applicable to all who apply for employment, union and non-union alike. Certainly the record makes it doubtful that an ITU card is conclusive proof of competence. (Tr. 3965-66, 3989-93, 4122). If the Union man is qualified and the non-union man is not, such tests will show the fact. There is, in short, no need for attaching special prerequisites to the Union card except as a means of guaranteeing the holder employment preference and there is no warrant for the recognition of any such preference under the statute.

The so-called competency clause proposed by Respondents after the March injunction is then clearly discriminatory. Consequently, if Respondents endeavored to force its imposition upon employers, it follows they thereby committed an unfair labor practice within the meaning of 8(b) (2). The post injunction negotiations at New York establish that such was the case.

As has heretofore been found [pp. 41-42, supra], New York Local #6, soon after the issuance of the injunction, made a proposal to its employers, which varied in several material respects from that sponsored by Respondents. As modified by counterproposals of the employers, this resulted in an agreement between the local scale committee and the publishers' representatives. Among other things, this set up a priority hiring sequence as follows:

(1) Regular situation holders;

(2) journeymen who had served in the same composing room;

(3) journeymen with experience in other N. Y. composing rooms;

(4) journeymen whose competency was not doubted by the foreman or who had been tested for competency by qualified and impartial examiners of the New York City Board of Education.

Before the agreement could be submitted for vote of the local membership, Respondents intervened and thereafter ordered the modification of this hiring system by a letter reading in pertinent part as follows (Bd. Ex. 90-B):

'With respect to Section 84, 'Employment, Discharge, Priority', attention is called to two highly dangerous impracticable and inequitable provisions.

The provision 'Journeymen with experience in other composing rooms in Greater New York' would open up newspaper composing rooms to all those who have worked in Greater New York, union or nonunion, giving such applicants preference over members from outside New York. This provision must be eliminated.

The fourth rule to be followed by foremen when hiring new employees gives the union no voice in selecting examiners or power to establish standards. Perhaps it has been assumed that the Board of Education will name 'qualified and impartial' examiners who are members of the union but we cannot stake the future welfare of the organization on an assumption that a group of persons who have no technical knowledge of the printing industry or interest in the Typographical Union will act to protect our interests.

There is nothing in any law which compels the union to waive all rights in determining the standards which must be met by those who seek employment on work over which the union exercises jurisdiction.

The fourth rule should be drafted as follows:

'Journeymen concerning whose competency the foreman has no reason to doubt or journeymen who have registered for employment after having their competency tested and certified by the Joint Examining Board under procedures established by the School for Printers' Apprentices of New York City. Foremen may not exclude as candidates for employment any individuals who establish competency.'

The letter of instructions concluded with the following warning:

> 'Wherever the word 'should' has been used in reference to any change suggested it is not used in a permissive sense as to the subject covered. The words we have used will be approved. Any deviation therefrom must be approved by the Executive Council before being submitted to the union.'

The plain import of this mandate was that any surrender of preference for union members would not be tolerated. With union foremen in control of the composing room, an ITU membership card would, of course, eliminate 'doubt' as to 'competency'. Respondents' real intention is apparent from Respondent Randolph's disclosure during that the school referred to in the revised rule 4 was controlled by Respondent Union. (Bd. Ex. 80-B, p. 909). The short of the matter is that Respondents would permit no system which gave any voice in hiring to impartial authorities. They were determined to thwart any procedure which in fact would permit equal employment opportunities for all qualified printers in newspaper composing rooms. Their success in New York City is pointedly exemplified by the bewildered comment of the President of Local #6, following Respondent Randolph's intervention, that he could not resume negotiations because he did not understand what had happened. (Tr. 3823-3824).

Accordingly, by attempting to enforce discrimnnatory competency clauses after March 27, 1948, Respondents committed further unfair labor practices in violation of 8(b) (2) of the statute.

The New York negotiations after the injunction also reveal the continuation of Respondents' illegal conduct with respect to jurisdiction. In this regard also, Respondents mandated a change in the agreement which had previously been reached, declaring in their letter of instructions (Bd. Ex. 90-B):

> 'The jurisdictional clause is inadequate in view of the large amount of varityper equipment the New York publishers have installed.
>
> It is unlikely they will dispose of this equipment, and it will remain a threat to employment of union members unless the union holds jurisdiction over these machines. Therefore, the second paragraph of the clause should be altered as follows:

'This jurisdiction is defined as including all composing room work in newspaper composing rooms covered by this contract and includes hand compositors, typesetting machine operators, makeup men, proofreaders, machinists for typesetting machines, operators and machinists on all mechanical devices which cast or compose type or slugs, operators for perforating tape for use in composing or producing type, operators of photo typesetting machines, and operators of machines such as varitypers, the product of which is used in printing, and no employer shall make any other contract covering such work.'

The first clause in the third paragraph should read:

'Such work in the composing room shall be performed only by apprentices and journeymen except as hereinafter provided in Sections 56 and 81 . . .'

By dictating such seizure of control over a wholly different art, particularly one in which another Union is operating (Tr. 3744, 3755), Respondents attempted to cause employers to discriminate against qualified non-members and thus were guilty of further violations of 8(b) (2). Albert Love Enterprises, 66 NLRB 417; see NLRB *v.* Nt'l Broadcasting Co., 150 F. (2d) 895 (CCA 8th, 1945), enforcing 61 NLRB 161.

Finally, the 'normal account' variation of the 'struck work' clause entailed continued violation of 8(b) (1) (A) in view of the fact that, prior to the passage of the Taft-Hartley law, dealings with non-union shops had almost universally been barred by struck work clauses."

(7) Page 57, Line 24, Through Page 60, Line 18, Including Footnotes: Exception is taken to these findings and to the failure to find instead as follows:

"This charge raises two questions: first, whether there was restraint and coercion in fact; and if so, whether, such coercion unlawfully impaired the exercise of rights accorded to employees by the statute.

The pertinent statutory language is as follows:

Section 8 (b) (1) (A):

'It shall be an unfair labor practice for a labor organization or its agent—(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 7: Provided, that this paragraph shall not impair the right of a labor organization to prescribe

its own rules with respect to the acquisition or retention of membership therein:—'

Section 7:

'Employees shall have the right . . . bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining . . .'

The record overwhelmingly establishes that Respondents coerced and restrained ITU members—who are, of course, 'employees'' within the meaning of the Act—in the course of enforcing the above-described policy, adopted at the 1947 Cleveland Convention. As is shown by the previous findings as to particular local negotiations, the representatives of subordinate unions repeatedly disclosed their helplessness to depart from Respondents' directives and mandates in dealing with employers.

Especially illuminating are the developments in New York. As the uncontradicted evidence shows, Victory, the president of the New York local, upon hearing the injunction decree entered at Indianapolis, exclaimed: 'Let's get at it, let's get somewhere; we are free now'. (Tr. 3780, 3784). The local scale committee then proceeded to negotiate a satisfactory agreement with the publishers, only to have Respondent Randolph prevent its submission to the local membership and disrupt matters to the point where Victory stated he could not resume negotiations because he did not understand the meaning of Randolph's actions. (Tr. 3823-3824).

There is no room, either, for doubt of the intimidating force of Respondents' orders. By the change in the by-laws effected at the ITU's 1947 convention, the individual Respondents, as the Executive Council of the ITU, were vested with the power to expel local unions or members who did not submit to their dictates in enforcing the Cleveland policy [See pp. 5-6, 14 supra]. This was a compelling authority, since expulsion meant a heavy financial cost involving the absolute loss of substantial old age pensions and mortuary benefits. (Tr. 3179-80). That the membership was acutely conscious that such was the price of disobedience to Respondents' commands is obvious from the express mention of the fact by local representatives not only at South Bend, as set forth above [see p. 29 supra], but also at New York. (Tr. 3901). And, of course,

the telegraphic mandate to Claude Baker, at San Francisco, threatened expulsion, if compliance was not forthcoming.

The next question is whether such restraint and coercion impaired the exercise of "rights" guaranteed to "employees" by Section 7 of the Act. This demands full understanding of the true nature of the policy Respondents were enforcing. As Randolph testified (Bd. Ex. 80-D, pp. 122-3) and as has been found [p. 16 supra], it was first conceived in 1944 for the purpose of thwarting the anti-closed shop laws which several states had enacted. The theory and operation of the policy have already been recorded by this Board in an earlier proceeding as follows (In the Matter of Times Publishing Comany, et al, 72 NLRB 676, 678 et seq):

> 'Sometime before August 1 [1946] the Union presented the respondents with its 'Conditions of Employment,' the preamble to which is set forth in the Intermediate Report. These Conditions, the use of which was prescribed as a national policy by the I.T.U., were signed only by the Union and the I.T.U. and stated that the Union 'establishes the wages, hours and working conditions' as set forth herein. The Conditions included a provision that the composing room should be operated under all the laws of the I.T.U. and of the Union, and did not include the arbitration provisions of the prior contract, in complete disregard of the oral agreement which the respondents and the Union had already made. The Union's president, in presenting the Conditions, stated that they were not a contract and need not be executed by the respondents, and readily admitted that it was a "take-it-or-leave-it' proposition.
>
> At this time it had become public knowledge that the failure of a publisher to accept such I.T.U. Conditions would result in a strike. On July 14, 1945, about 2 weeks before the Union presented the Conditions to the respondents, the I.T.U., at a public hearing before the War Labor Board involving two I.T.U. strikes against newspapers in New Jersey, had informed that Board as follows:
>
> (a) That the matters in dispute between the Union and Publishers would not be submitted either

to collective bargaining or to the Board for peaceful adjustment in accordance with the War Labor Disputes Act; (b) that the terms and conditions under which its members would work are subject to the unilateral determination of the union's Executive Council through amendment of the union's 'laws'; (c) that its member will not work and that newspapers will not be published except under terms satisfactory to the union; and (d) that the strikes . . . would be continued and other strikes commenced unless the terms of employment fixed by the union through its 'laws' were accepted by the publishers. (26 War Lab. Rep. XXIV, XXVII).

In a Resolution and accompanying statement issued by the War Labor Board on the same day as the hearing, it condemned the stand taken by the I.T.U. and declared that 'any purported agreement which may be negotiated in pursuance of the policy of the International Typographical Union set forth above, will be held to be in violation of public policy as embodied in the War Labor Disputes Act.' (26 War Lab. Rep. XXIV, XXVII).

The May 1945 issue of the I.T.U. official publication also carried a statement of its president regarding the imposition of such Conditions, stating, among other things, that the publishers 'have not been asked to accept them. The Union has prescribed them. The usual form of collective bargaining has been discontinued in such cases. The more widespread becomes that policy the more wide-spread will collective bargaining as we have known it, be in the discard.'

Faced with the alternative of acceptance of the Union's Conditions or a strike, the respondent newspapers posted the Union's Conditions on August 1, 1945, and thereafter operated their composing rooms in accordance with the requirements of these Conditions.'

The 'stand' thus taken by Respondent Union in the defiance of the War Labor Board is the core of the policy it adopted to counter the Labor Management Relations Act of 1947 and which the individual Respondents have enforced against the ITU's constituent unions and its membership. In theory and application, the objective of the

policy was the deliberate repudiation and destruction of the whole process of collective bargaining, exactly as Respondent Randolph stated in the above-quoted issue of the Typographical Journal for May, 1845. The various artifices and devices adopted since that time in the course of Respondents' activities, in particular the Conditions of Employment and P-6A forms do not alter the real character of the policy. They represent only transparent attempts to disguise it.

It was to achieve their purpose to abandon the collective bargaining process that Respondents restrained and coerced ITU membership. The right thereby impaired is precisely that guaranteed to employees by Section 7—to bargain collectively through representatives of their own choosing—and to the preservation and promotion of which the whole statutory scheme is fundamentally dedicated. It follows that Respondents committed an unfair labor practice within the meaning of Section 8(b) (1) (A) of the statute.

The charge in question is not avoided by the argument that there could be no unlawful restraint or coercion of ITU members because they consented to the policy, and to its enforcement by the individual Respondents, through democratic procedures, in particular the balloting at the Cleveland convention in 1947. This establishes at most that the members may not have been originally coerced into adopting it. But the issue here arises from Respondents invocation of restraint and coercion against any attempts by the membership to abandon the policy in favor of the exercise of the right to bargain collectively, as is illustrated with particular clarity by the events at San Francisco and New York. No asserted consent to abandon the right to bargain collectively could extinguish its existence, nor could it be defeated by the contrary wishes of a majority of the membership of Respondent Union. The source of the right is a congressional declaration of the public interest of the land and it is vested in any appropriate group of employees who select representatives to execute the right for them, as each subordinate Union of the ITU is admittedly qualified to do: (Bd. Ex. 80-D, pp. 2-43). 'We are not dealing here with private rights, nor with technical concepts [of principal and agent relationships], but with a clear legislative policy to free the col-

lective bargaining process from disruption by unions as well as employers. (Cf. National Ass'n of Machinists v. NLRB, 311 U.S. 72, 80, 61 S. Ct. 83, 88). The asserted consent to waive the rights protected by Section 7 of the Act can no more justify Respondents' restraint of later efforts to exercise them than a contract agreeing to compulsory servitude could excuse a violation of the anti-peonage laws. Cf. United States v. Reynolds, 235 U.S. 133, 35 S. Ct. 86; The Peonage Cases, 123 Fed. 671, 680 (CC Fla. 1905).

Nor does the rejection of the Ball Amendment afford any basis for dismissing the charge in question. This amendment was as follows (93 Cong. Rec. 4568):

> 'The Chief Clerk. On page 4, line 16, after the word 'employers', where it appears the second time in the line, it is proposed to insert the following: 'in the same metropolitan district or county'.
>
> 'On page 5 strike out lines 8 and 9 and insert in lieu thereof the following:
>
> '(4) The term 'representatives' whether used in the singular or plural means any individual or a labor organization irrespective of whether or not it is a constituent unit of or an affiliate of an organization, national or international in scope, composed solely of employees of one employer, or of employees, or of employees employed in the same metropolitan district or county by different employers.'
>
> 'On page 16, between lines 15 and 16, insert the following:
>
> '(6) To coerce or compel or attempt to coerce or compel (irrespective of whether or not such coercion or compulsion is authorized by any provision in its constitution or by-laws) a labor organization which is a constituent unit of an affiliate of such labor organization, which acts as the representative of employees for collective-bargaining purposes to include or omit or to seek the inclusion in or omission from any collective-bargaining agreement of any particular terms or provisions relating to wages, hours of work, or other conditions of employment.'

This amendment, rejected by the Senate (93 Cong. Rec. 4568), had a threefold purpose, according to the pertinent committee report (S. Rep. 105, 80th Cong. 1st Sess.,

pp. 50-52), only one of which was to prevent a national union from forcing upon a local affiliate the terms of a contemplated agreement. But there is no Congressional indication as to the reason the amendment failed. Hence the history of the amendment is of dubious significance at best.

The crucial point, however, is that the Ball Amendment did not in terms reach the issue at hand. What is here involved goes far beyond an effort to impose the particular contents of a collective bargaining agreement. Respondents' purported prescription of the terms for local unions to incorporate into agreements was merely a sham; there was no intent on Respondents' part that agreements be effected. Rather the mandatory terms were deliberately so designed so as to make any agreement impossible. This purpose in fact was openly avowed by Respondents. For example, their postcard Bulletin No. 99 dated September 5, 1947, proclaimed (Bd. Ex. 7N-20):

> 'Our Collective Bargaining Policy unanimously adopted by the convention went into effect August 22, 1947. It was also adopted as a part of our General Laws effective January 1, 1948. (See Convention Proceedings).
>
> That policy can be successful only as long as local unions and employers fail to reach an agreement by the processes of collective bargaining.
>
> Under the old Wagner Act real collective bargaining was encouraged and the right to make a closed shop agreement was protected.
>
> Under the THL collective bargaining is being made too difficult and the making of contracts is now undesirable to organized labor.'

And the confidential memorandum circulated with Form P-6A among the collective bargaining representatives of the constituent subordinate unions is no less revealing (Bd. Ex. 7-P):

> 'To the Officers and Scale Committee of All Subordinate Unions:
>
> Confidential Not to Be Printed or Posted.
>
> The contract form P-6(a) prepared for submission when employers insist on a contract contains ample reason for rejection by employers in the first paragraph which provides for 60 days' termination. Do Not Change That Limit.

The other sections on the first page (a) to (i) inclusive are absolutely necessary. Do Not Change Them In Any Way.

This contract offer makes our 'Conditions of Employment' form much more desirable by employers.

Fraternally,

(Signed) Woodruff Randolph
President'

In short the issue here concerns not merely the injection of a national union into collective bargaining negotiations, which is all the Ball amendment touched, but a conspiracy to enforce illegal conditions upon an entire industry through the complete frustration and absolute destruction of collective bargaining between local labor organizations and their employers. To recognize the right of national unions so to destroy the opportunities of their constituents to bargain collectively is to attribute to Congress the incongruous intention to leave to private persons the power to determine whether the nation's 'employees' shall be permitted to exercise their basic and fundamental statutory right, which constitutes the very cornerstone of the whole legislative structure for the regulation of industrial relations. No such intention is to be inferred from the treatment of the Ball amendment, the meaning of which is equivocal at best.

Neither are Respondents protected against liability for the violation of 8(b)(1)(A) by the proviso in that section which allows labor organizations to make rules governing the acquisition and retention of membership therein. The short answer again is that Congress is not to be deemed to have left to the sufferance of some private persons the availability to others of statutory rights created in the public interest. The argument is little more far-fetched than a contention that a union could prescribe a period of peonage as a condition of membership.

(8) Page 63, Line 42 Through Page 71, Line 2 Including Footnotes: Exception is taken to these findings and to the failure to find instead as follows:

"Reproduction, or as printers call it bogus, is in fact of no benefit whatsoever to publishers, being a wasteful and costly practice which serves only to create extra work and to require the employment of extra printers who

would not otherwise be employed. The evidence shows, and it is found, that if reproduction were eliminated, publishers would be able to reduce their regular composing room complement by as much as 5% and effect an equivalent reduction in composing room costs. That the savings would be substantial is illustrated by the evidence that the annual cost of bogus runs to $150,000 at the New York Times; $50,000 at the Chicago Herald-American; and $5,000 at the Rochester Democrat & Chronicle.

3. How the issue arises

Although bogus is an old bone of contention in the industry, most publishers in recent years have been compelled to submit to it because resistance was obviously futile. The futility arose from the unilateral incorporation of bogus into the laws of the Respondent Union, together with the requirement that all contract proposals had to be submitted for approval of the individual Respondents herein as in compliance with such laws. This effectively precluded local unions from even considering the elimination of bogus, particularly since a local union which entered into an unapproved contract was risking the loss of strike benefits in the event of a latter dispute concerning the agreement. [See p. 7 supra]. The subject of bogus was thereby removed as a practical matter from the scope of negotiations with publishers. For the fact was, as Respondent Randolph testified (Tr. 3103), that a contract without a bogus clause would not be approved, with the result that publishers who defied a demand for bogus had no chance of eliminating it and were simply courting trouble.

The hopelessness of resistance to the Union's bogus law is sharply illustrated by the evidence concerning negotiations at Rochester and New York. The Rochester publishers have endeavored to eliminate bogus during every past negotiation with representatives of ITU Local 15, only to be met with the reply "that it was part of their ITU laws and they couldn't do a thing about it." (Tr. 4056). At the last negotiation the publishers had no more success with a more limited proposal that bogus be waived where there were insufficient printers at straight time to do regular composing and set the bogus within the time limit fixed in the bogus clause. (Tr. 4064, 4067).

At New York, despite the fact that the local bargaining representatives, relying on the Indianapolis decree, reached a meeting of the minds with the publishers, they rejected all efforts of the latter to eliminate bogus, stressing the impossibility of doing so in the face of the laws of Respondent Union. (Tr. 4032-34).

4. Conclusions

Section 8(b)(6) provides:

> "It shall be an unfair labor practice for a labor organization or its agents to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or to be performed."

The basic issue as to the lawfulness of bogus within the meaning of this provision is raised by Respondents' contention that although bogus admittedly is not intended for use, there is no violation because the printers go through the routine of setting it. In support of this claim, heavy reliance is placed upon the legislative history, which, it is urged, restricts the prohibition to the stand-by employee, of which the classic example is the extra musician who does not play. It is unquestionably true that the legislative history emphasizes the stand-by as the primary target of 8(b)(6). But such an absolute limitation of the provision would not only ignore its language, but in effect would emasculate it completely.

In the first place, the critical word in the clause is the term 'services'. Webster's New International Dictionary (2nd Edition, Unabridged) contains two pertinent definitions of the term, as follows: "performance of labor for the benefit of another, or at another's command; labor performed for another." The essence of the word is benefit or gain from the labor by the party for whom it is performed. Bogus has no such quality for the newspaper publisher. As the term itself discloses, it is nothing more than fake work—utterly useless to the publisher who must pay for it.

Secondly, to apply the proscription of 8(b)(6) exclusively to the traditional stand-by employee would be tantamount to reding the section out of the staatute. It defies reason to conclude that Congress intended to prohibit the idle violinist, but to tolerate one who fiddled out of the audience's hearing. Such a construction would simply invite disingenuous devices to evade the law.

This is not to say that 8(b)(6) was intended to reach all featherbedding practices. The legislative history shows otherwise. The sound construction of the statute, rather, is indicated by Senator Taft's explanation of Section 8(b)(6) as it emerged from conference (93 Cong. Rec. 6598):

> 'The house had rather elaborate provisions prohibiting so-called featherbedding practices and making them unlawful labor practices. The Senate conferees, while not approving of featherbedding practices, felt it was impracticable to give a board or court the power to say that so many men are all right, and so many men are too many • • • So we declined to adopt the provisions that are now in the Petrillo [Lea] Act • • • We thought that probably we had better wait and see what happened, in any event, even though we are in favor of prohibiting all featherbedding practices. However, we did accept one provision which makes it an unlawful labor practice for a union to accept money for people who do not work. That seemed to be a fairly clear case, easy to determine, and we accepted that additional unfair labor practice on the part of unions which was not in the Senate bill.'
>
> • • •

The point is that Congress excluded cases in which all of the work done by allegedly excessive number of employees was actually to be utilized by the employer and where the determination of how many were really necessary involved refined questions of judgment. But that is not this case. There is not even a pretense that bogus is intended for use and it is an admitted and demonstrated fact that its very purpose and inevitable consequence is to force the employment of supernumeraries. Respondent Randolph himself so testified, as follows (Tr. 3101):

> 'Q. (By Mr. Van Arkel) What is your judgment would be the consequences upon employed printers if the reproduction rule were eliminated?
>
> A. There would be less employment, of course.'

In its essence and effect, then, bogus is indistinguishable from typical stand-by labor. Both foist upon the employer otherwise unnecessary help which acknowledgedly contributes exactly zero to output. Nor does it

follow, as Respondents suggest, that the condemnation of bogus under 8(b)(6) would mean that call-in pay and rest or vacation periods must likewise be banned. As Senator Taft noted, call-in pay results from the employer's initiative in summoning the employees involved. (93 Cong. Rec. 6603). And paid vacation and rest periods, of course, contribute to increased efficiency.

Nor can any defense against 8(b)(6) be predicated on the premise that payment for bogus was formally presented in the course of collective bargaining negotiations. The provision in terms condemns an "attempt to cause an employer to agree to pay" the prohibited fee. Certainly in this day and age the initiation of any proposal for the payment of money to a union's members would take the form of bargaining negotiations. It would be naive to hold that Congress meant to reach only forcible efforts to accomplish the illegal end. The criminal laws are adequate to take care of that kind of thing.

Nor is it necessary to decide here whether the mere presentation of a proposal for bogus in the course of negotiations would be unlawful, although it is not inconceivable that Congress meant to outlaw completely any effort by a union to get something for nothing. For the circumstances at hand establish that bogus was only ostensibly presented for negotiation, whereas in fact there were certain minimum requirements, as set forth in the laws of Respondent Union, which were mandatory. Employers had to recognize such minima or do without an agreement, as Respondent Randolph's testimony admits and as all publishers unquestionably knew. Bogus, among other things, was exacted as an inexorable condition of any contractual relations with ITU members. It is not accidental that Respondents failed to introduce even a single agreement that did not conform to the bogus law.

Finally, Respondents cannot escape responsibility for the illegal bogus requirements. The law which requires bogus is a law of Respondent Union and the individual Respondents are responsible for the enforcement of those laws and have in fact throughout the events at bar enjoined upon subordinate unions and their membership the necessity of forcing publishers to comply therewith.

It follows that Respondents committed unfair labor practices within the meaning of Section 8(b)(6) of the Act.

(9) Page 71, Following Line 54: Exception is taken to the failure to conclude further as follows:

"4A. By attempting to cause, directly and through subordinate locals, a substantial number of newspaper publishers throughout the United States to give preference examination as to competency, while compelling non-members to submit to such examination and further by requiring non-members to take such examination before boards in which ITU members have an equal voice, not subject to any tie-breaking procedure, or before authorities otherwise subject to control of the ITU, Respondents and each of them have attempted to cause such publishers to discriminate against employees in violation of Section 8(a)(3) of the Act and thereby engaged in unfair labor practices within the meaning of Section 8(b)(2) of the Act."

"4B. By causing, directly and through subordinate ITU locals, a substantial number of newspaper publishers throughout the United States, to leave to the unilateral determination of the ITU the work jurisdiction of its members, and the selection of what jobs, particularly on new machines and processes, shall be assigned to its members, and more particularly by causing such publishers to assign jurisdiction over varitype machines to members of the ITU, Respondents, and each of them, have attempted to cause such publishers to discriminate against non-ITU employees who are qualified to perform such work in violation of Section 8(a)(3) of the Act and have thereby engaged in further unfair labor practices within the meaning of Section 8(b)(2) of the Act."

(10) Page 71, Following Line 61: Exception is taken to the failure to conclude further as follows:

"5A. By attempting to cause, directly and through subordinate ITU locals, a substantial number of newspaper publishers throughout the United States to refuse to handle work received from, or destined for, shops which employ non-ITU printers, Respondents, and each of them, have restrained and coerced the employees of such shops in the exercise of their right guaranteed in Section 7 of the Act to bargain collectively through representatives of their own choosing or to refrain from collective activities, and thereby engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act."

"5B. By commanding and directing officers and scale committees of subordinate ITU locals, upon the threat of severe penalties, (i) to impose upon a substantial number of newspaper publishers throughout the United States conditions of employment mandated by Respondents (including particularly those designed to maintain ITU closed shops of preferential hiring for ITU members, and to perpetuate ITU struck work practices and to preserve the ITU'S asserted prerogative to define its own jurisdiction) and (ii) to refuse to enter into any agreements with such publishers that did not provide for cancellation upon 60 days notice and to refuse to consider any contrary counter proposals and (iii) to insist upon the incorporation of clauses violative of the Labor Management Relations Act of 1947 in any agreements for a duration of more than 60 days, Respondents, and each of them, restrained and coerced ITU members, who are employees within the meaning of the Act, in the exercise of their right guaranteed in Section 7 of the Act to bargain collectively through representatives of their own choosing, and thereby engaged in further unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act."

(11) Page 72, Following Line 7: Exception is taken to the failure to conclude further as follows:

"6. By attempting to cause, directly and through subordinate ITU locals, a substantial number of newspaper publishers throughout the United States to pay wages for 'bogus' work (consisting of advertising matter already carried in the newspaper which is reproduced with the knowledge that it is thereafter to be thrown away) Respondents, and each of them, attempted to cause such publishers to hire and pay superfluous printers who contribute no services and thereby engaged in unfair labor practices within the meaning of Section 8(b)(6) of the Act."

(12) Page 72, Following the First Comma in Line 45: Exception is taken to the omission from this recommendation of language substantially as follows:

"or provisions whereby ITU members seeking employment may establish competency on any more favorable terms than non-member applicants for jobs, or provi-

sions causing employers in the newspaper industry to surrender to the sole determintion of the ITU the work jurisdiction of its members and the selection of what jobs, particularly on new machines or processes, shall be assigned to its members, and more particularly by causing such employers to assign jurisdiction over varitype machines to members of the ITU, without regard to the wishes of non-members who are qualified to perform such work."

(13) Page 73, Following the Word "Act" In Line 9: Exception is taken to the omission from this recommendation of language substantially as follows: "or by attempting to cause, directly and through subordinate ITU locals, a substantial number of news paper publishers throughout the United States to refuse to handle work received from or destined for shops which employ non-ITU printers, or by commanding and directing officers and scale committees of subordinate ITU locals, upon threat of severe penalties, to force employers in the newspaper industry to recognize or agree to terms whereby closed ITU shops would be maintained, or whereby ITU members would be hired under preferential procedures, or whereby ITU members would be free to refuse to work on non-union goods, or whereby the ITU would be left free to determine the work jurisdiction of its members, or whereby jurisdiction over new machines and processes, particularly varitypers, would be assigned to ITU members without regard to the wishes of non-members qualified to perform such work, or whereby only ITU members could be appointed as foreman of the composing room, or whereby the payment of wages for bogus work would be required."

(14) Page 73, Following Line 16: Exception is taken to the omission to recommend additionally as follows:

"5. Directly, or through subordinate ITU locals, causing or attempting to cause employers in the newspaper industry or any other industry to pay wages for work consisting of the reproduction of matter which has theretofore been printed in the newspaper or has already been produced or otherwise made available for the employer's use."

(15) Appendix C: Exception is taken to the failure to include the recommendations herein set forth in Exceptions numbered 12, 13 and 14.

Respectfully submitted,
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UNITED STATES OF AMERICA
Before the
National Labor Relations Board

In the Matter of International Typographical Union, and its agents Woodruff Randolph, Larry Taylor, Elmer Brown and Don Hurd, and American Newspaper Publishers Association, et al.	Case No. 9-CB-5 Case No. 13-CB-6

BRIEF FOR THE INLAND DAILY PRESS ASSOCIATION AND EXCEPTIONS TO THE TRIAL EXAMINER'S INTERMEDIATE REPORT

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I
INTRODUCTION

These cases draw into question the validity, under the Labor-Management Relations Act, 1947, herein called "the Act", of the entire program adopted and pursued by respondent International Typographical Union, herein

called "ITU", in its frank effort to evade the impact of the Act on its self-styled three historic prerogatives: the closed shop; the refusal to handle "struck" or "substandard" work; and the maintenance of its "jurisdiction".

This program was adopted at the ITU Annual Convention in August, 1947. It has been effectuated by a series of devices—Conditions of Employment, Form P-6A and the "Contract Provisions Which May Be Proposed in Collective Bargaining During Pendency of Federal Court Decree" (herein referred to as the "post-injunction proposals")—each of which forms a part of a highly integrated system whereby respondents have sought to pursue their earlier practices despite their recognition that these practices are no longer permitted by the Act. Pragmatically, this program has been successful thus far, despite these proceedings and despite the issuance of an injunction by the United States District Court for the Southern District of Indiana on March 27, 1948, directed against a very limited number of the substantive features of respondents' total system of demands.

In his Intermediate Report the trial examiner recites in substantially adequate (though not, in our view, wholly accurate) detail the factual background of the challenged conduct, the ITU collective bargaining policy adopted at its 1947 convention, the various clauses and provisions of the first two major devices—the Conditions of Employment and the Form P-6A agreement. He does not, in our view, give an adequate account of the post-injunction proposals adopted by the respondents subsequent to the issuance of the injunction on March 27, 1948.

We adopt, and urge upon the Board, the "Exceptions by the General Counsel to the Trial Examiner's Intermediate Report" in Cases Nos. 9-CB-5 and 13-CB-6.[1]

We support the findings and conclusions of the trial examiner insofar as he finds (IR-45-51) respondents guilty of violations of sections 8(b)(2) and 8(b)(1)(A) and (B) of the Act. Our position in support of these conclusions is set forth in our brief filed with the trial examiner in these cases, herein referred to as "Brief",

[1] Throughout this brief the Intermediate Report in Case No. 9-CB-5 will be referred to as "IR"; and the Intermediate Report in Case No. 13-CB-6 will be referred to as "CNPA-IR".

copies of which are annexed hereto and incorporated herein.

Expressed in the largest terms our differences with the trial examiner are of three different kinds.

First: We believe that a fair-minded and realistic evaluation of the various facets of respondents' policy and conduct must take account of the central fact that each of the particular devices and clauses insisted upon by them is a part of a single integrated system developed to effectuate the collective bargaining policy adopted by the ITU at its 1947 convention and that the full impact and significance of each contract clause or provision can only be adequately assessed if it is viewed along with all the other clauses and provisions insisted upon by respondents in one form or another down to the present time in its pursuit of its basic collective bargaining policy.

Our first general difficulty with the Intermediate Report arises from the extent to which the trial examiner accords varying significance to this central fact in reaching his factual and legal conclusions. For some limited purposes (notably in dealing with certain provisions of the Conditions of Employment and Form P-6A which respondents have now in substance abandoned) the examiner takes account of the interrelationship of the various clauses and their position in the grand design of the ITU.[2] But in other important respects the trial examiner chooses to view particular clauses in isolation and without regard to the ITU's announced policy. And by this process of fragmentation and unrealistic isolation from the large policies in which the various clauses find their proper context, he reaches factual and legal conclusions which we believe to be wrong.

These deficiencies cannot be exposed by a page-by-page analysis of the record. We can do no more than to urge the Board to consider each challenged clause in relation to the total picture revealed by the whole record.

Second. A second large area of our exceptions to the Intermediate Report arises from our view that the trial examiner has, albeit ingeniously, made serious legal errors in his effort to find grounds for avoiding decision

[2] See e. g. IR, 46 and 48, lines 26-28, at which latter point the examiner observed: "The character of P-6A is to be treated by looking at it, not in the abstract, but in relation to the over-all ITU policies and objectives of which it admittedly formed part".

with respect to many of the important issues in these cases. Examples of such errors are, in our view, to be found in the examiner's treatment of refusals to bargain as independent violations of section 8(b)(1)(A) (IR 67-60); and his refusal to consider the "laws", jurisdiction, picket line and limitation of liability clauses in connection with the question of refusal to bargain (CNPA, IR 7, note 7).

Third. A final area of difference arises from what we conceive to be the trial examiner's errors of law in reaching his substantive conclusions concerning various aspects of respondents' conduct. Examples of such errors are his conclusions with respect to struck work clauses (IR 51-52; CNPA IR 9-11).

We shall not here repeat all of the arguments with respect to each subject covered by our brief but will confine ourselves to the further development of some of these arguments in the light of the examiner's Intermediate Report and recent decisions of the Board. These will include (1) refusal to bargain as a violation of Section 8(b)(1)(A); (2) the struck work provisions as violations of Section 8(b)(1)(A) and (2); (3) the respects in which respondents have refused to bargain in violation of Section 8(b)(3) and 8(b)(1)(A); and (4) the effect of the post-injunction contract proposals insisted upon by respondents.

We believe the examiner's findings and conclusions that respondents' insistence on bogus does not constitute a violation of Section 8(b)(6) are erroneous. In addition to the argument already advanced in our brief, we fully agree with the analysis and argument on this question set forth in the "Brief and Argument to the National Labor Relations Board on Behalf of the General Counsel".

II.

REFUSAL TO BARGAIN AS A VIOLATION OF SECTION 8(b)(1)(A)

In our view, one of the trial examiner's major errors was his conclusion that a refusal to bargain in the circumstances of this case did not constitute restraint and coercion of employee rights under Section 8(b)(1)(A). It was his conclusion, subsequently given some support by the Board itself

in *In re National Maritime Union of America, et al and Texas Company, et al,* 78 NLRB No. 137, 22 LRRM 1289, that an allegation of a refusal to bargain cannot be sustained where it is alleged not as a violation of Section 8(b)(3) but as a violation of Section 8(b)(1)(A).

As a result of this ruling, the trial examiner avoided decision of the question of whether the union, by insisting upon employer acceptance of the (1) struck work clause, (2) picket line clause, (3) jurisdictional clause and (4) limitation of liability clause, respondents violated the Act by making contracts "dependent upon the acceptance of provisions in the agreement which, by their terms or in their effectuation, are repugnant to the Act's specific language or basic policy." *National Maritime* cases, *supra.* If one or more of these clauses fall into this category it was a clear breach of the duty to bargain.

We earnestly submit that the language of subsection 8(b)(1)(A) lends no support to the trial examiner's conclusion and that our exceptions to it should be sustained. It must be remembered that in the *National Maritime Union* cases the issue of whether a refusal to bargain violated 8(b)(1)(A) was relatively unimportant as the complaint in those cases contained allegations of refusal to bargain under Section 8(b)(3) as well as 8(b)(1)(A). Hence the issue, so crucial in this case,[3] was neither squarely presented to the Board by that litigation nor fully briefed or argued by the parties.

We believe that the Board should reconsider this question here for an additional reason. It should be remembered that on the opening day of the hearing the trial examiner struck the refusal-to-bargain allegations from the complaint after respondents had contended that such allegations were not germane to Section 8(b)(1)(A). The Board, however, reversed this ruling upon appeal by the General Counsel and the intervenors before any evidence was taken. In reinstating these allegations in the complaint the Board instructed the trial examiner to defer ruling on the question until all the evidence was in. This instruction indicated that the Board did not regard the issue merely one of pleading. Otherwise it would not have put the parties to the burden of

[3] The complaint in the A.N.P.A. case (9-CB-5), unlike the companion Chicago case (13-CB-6), contains no reference to Section 8(b)(3), and in the latter case the issue of the union's post-injunction conduct was not raised by the evidence of the local dispute.

encumbering the record with weeks of testimony which, if the trial examiner was correct the first time, must now be viewed as entirely irrelevant. Accordingly, we believe that the Board should not lightly reject our contentions even though it may mean overruling a minor portion of the *N.M.U.* case.

We think the flaw in the trial examiner's reasoning is this:

Granted that the Act gives employees a right to bargain collectively "through representatives of their own choosing" or to refrain from so doing—and that "rights are not rights if one is required to assert them"—there can be no question that in this case the *right was asserted.* The trial examiner found that in the *Chicago* case respondent ITU and Local 16 were at all times the bargaining representative. By stipulation it was established that respondent ITU (or at least a subordinate local) represented the employees in the various bargaining units involved in the principal case. It is clear therefore that the employees, alleged to have been restrained and coerced, exercised affirmatively the rights guaranteed them by Section 7.

Trial Examiner Leff does not seriously dispute this. What he says is:

> "If * * * employees freely exercise the right also guaranteed them by Section 7, to refrain from bargaining, or, if, in accordance with their expressed or implied direction, their designated representative bargains for them in such a manner as to amount in legal effect to a refusal to bargain, it is difficult to perceive how the employees' 'right to bargain collectively through representatives of their own choosing' has been infringed."

We agree with the first premise—i.e. if employees freely decide to refrain from exercising their rights, no right has been infringed—but regard his second premise as a non-sequitur. Surely "bargain collectively" are words of art just as much in Section 7 as in Sections 8(a)(5) and 8(b)(3). The very notion that one can bargain collectively in such a way "as to amount in legal effect to a refusal to bargain" is self-contradictory. Collective bargaining is a legal concept, roughly defined in Section 8(d) of the Act and defined by numerous court and Board decisions. If a union becomes the representative for collective bargaining of all the employees under Section 9(a)—

as is the situation here—it would necessarily follow that such representation is for the purpose of bargaining within the statutory meaning.

When a union is designated, either formally or informally, as the collective bargaining representative, certain legal consequences automatically occur. By operation of Section 9(a) the union then has the right to bargain even for the minority who may not desire such representation. And by operation of Section 8(a)(5) it may also insist that the employer deal only through it concerning the wages and working conditions of even those employees who have and would like to maintain individual contractual relations with him. J. I. Case Co. *v.* N.L.R.B., 321 U. S. 322.

To suggest therefore that a union which has attained this status—which the trial examiner concedes respondents enjoyed at all times in this case—for a purpose which the statute defines, then has it within its own power not to carry out that purpose, is indeed a paradox.

The trial examiner attempts to fortify his conclusions by comparing the relationship of the employees and the union to that of principal and agent. The analogy may be a sound one as long as the union, as agent, acts within the scope of the authority its principals have conferred upon it. Under such circumstances the consent of the principals to what the agent does may be inferred even though they have not passed upon the particular details of the agent's operations.

But this principle has no application to a case where an agent having been appointed to represent his principals for one purpose undertakes on his own motion to act for them for another purpose. In such a situation no presumption of express or implied consent arises.

The trial examiner, however, has attempted to cure the defect in the implied consent theory by a finding of actual consent. He observes:

> "In the instant case, the record shows that the 1947 ITU convention policy, upon which the claim of refusal to bargain is principally predicated, was unanimously adopted by delegates democratically chosen by the members of all the subordinate locals. To hold under these circumstances, that Respondents, by carrying out the mandate of the membership have restrained or coerced ITU members, is to hold that

agents restrain and coerce their principals in carrying out their principals' orders." (Emphasis supplied)

The record, however, is completely barren of any evidence that the delegates to the 1947 ITU convention were "democratically chosen" or that the policy adopted there was the "mandate of the membership" in the sense that a majority of the rank-and-file members indorsed, ratified or even knew of it. It may be true that a majority of ITU members were not against the convention program, but if this is a proper subject for judicial notice a finding should also be made that a sizeable and articulate minority of the employees (in fact an actual majority in many of the bargaining units involved here) did not approve of the refusal of their representatives to bargain within the framework of the statute, since the individual respondents involved here narrowly escaped defeat in a national referendum of ITU members in which the convention program was the principal issue.

We are not contending that such a finding be made. We do emphasize, however, that there is nothing in the record which supports a finding that respondents, in acting "in such a manner as to amount in legal effect to a refusal to bargain", did so pursuant to the "expressed or implied direction" of a majority of the employees in all or any of the bargaining units involved here.[4]

Moreover to support any theory that restraint and coercion of individual employees was not a necessary consequence of a union's refusal to bargain, it is necessary to show that all the employees in the unit acquiesced in such conduct by their representative. The "doctrine of majority rule" to which the trial examiner refers (presumably the statutory power given the majority representative to bargain for and bind even the dissenters) supersedes the right of the individual only as long as the representative does in fact and in law engage in bargaining. There is nothing in the act which gives a union power to represent non-assenting employees for any other purpose.

Surely the proposition that a showing must be made in refusal-to-bargain cases that the employees must actually feel themselves coerced and restrained in a novel one. It

[4] While there are incidental references in the testimony to strike votes being taken in the Chicago and other locals, it should be remembered that the composition of these locals is much broader than the bargaining units since their membership includes employees in the job shops and even persons no longer working at the trade.

finds no support whatsoever in the body of case law built up under the Wagner Act where the Board invariably found a violation of Section 8(1) as well as Section 8(5) where employers had refused to bargain. In such cases the Board never inquired as to whether a majority of the employees were actually displeased because their employer subsequently failed to bargain with the union. Indeed it has deemed evidence to the contrary as irrelevant. NLRB *v.* Botany Worsted Mills, 133 F. (2d) 876. NLRB *v.* Appalachian Electric Power Co., 140 F. (2d) 217.

The Board has found restraint and coercion also under Section 8(1) and 8(5) where employers have granted wage increases outside the scope of the collective bargaining machinery even though there was every reason to think that the individual members of the bargaining unit might have been gratified by the employer's action. Great Southern Trucking Co. *v.* NLRB, 127 F. (2d) 180; Singer Mfg. Co. *v.* NLRB, 119 F. (2d) 131.

In reaching his conclusion we think the trial examiner failed to give effect to the doctrine of Medo Photo Supply Corp. *v.* NLRB, 321 U. S. 678, affirming 43 NLRB 989. In that case the employees, as here, had designated a union to represent them. After an impasse in the bargaining negotiations; a majority of the employees themselves thereafter dealt directly with the employer, informing him that he need no longer recognize the union if he granted them a wage increase. He did so. Such action was held to be a violation of both Section 8(1) and Section 8(5) even though it was clear on that record that a majority of employees had voluntarily waived their right to be represented collectively in return for the wage concession.

To sustain the position of the trial examiner therefore calls for the conclusion that the duty imposed by Congress upon employee representatives to bargain differs from that imposed upon employers. The language of the new Act, however, affords no support for any such conclusion. The wording of Section 8(b)(3) in which a duty to bargain is imposed upon employee representatives corresponds verbatim with the provisions of Section 8(a)(5). If a violation of Section 8(a)(5) is also a violation of Section 8(a)(1), as the Supreme Court conceded in NLRB *v.* Express Publishing Company, 312 U. S. 426, it would seem to follow that a violation of Section 8(b)(3) is also

a violation of Section 8(b)(1)(A), because this subsection in all relevant respects corresponds to Section 8(a)(1).

It is a fundamental principle of statutory construction that when the precise words of a statute which has already received authoritative judicial or administrative construction are later used by Congress in another statute, that the legislative body intended the words to be given the same interpretation. Consequently, in the absence of anything in the context of Title I of the Labor Management Relations Act, 1947 to a point to a contrary conclusion, we must assume that insofar as this title repeated words and phrases in the National Labor Relations Act of 1935, such words and phrases are impressed with a gloss of Board and judicial decisions. This principle is so well established that we do not think the trial examiner's reasoning can be supported in the light of the Medo Photo doctrine.

We also submit that the presumption of legislative intent arising from this well settled doctrine is not rebutted by the "legislative history" upon which the Board relied in the National Maritime Union decision. It is clear that Senator Taft and Senator Ball in defending the amendment now embodied in the statute as Section 8(b)(1)(A) were primarily interested in dispelling the exaggerated contention that their amendment would outlaw all strikes, picketing, or other forms of concerted activity protected by the Wagner Act. In explaining what this subsection would do, they, of course, made no complete catalog of all the types of conduct intended to be prohibited. The examples they gave were based not upon the "derivative" 8(1) cases decided by the Board but upon what the Board treated as employer misconduct in cases in which only Section 8(1) misconduct [in contradistinction to 8(2), 8-(3), 8(4) and 8 (5)] was an issue.

Thus the illustrations they cited, e.g., the resort to mass picketing, goon squads, threats of economic reprisal on the part of unions, etc., corresponded in their minds to such employer violations of Section 8(1) as violence against labor organizations, the use of company spies and threats of discharging or demotion.

There is nothing in the debate, however, to suggest that Section 8(b)(1)(A) did not also comprehend such viola-

tions of the Act as the committee bill enumerated in Section 8(b)(2), 8(b)(3) and 8(b)(4), since none of the opponents of the Ball amendment had raised any such issue. Indeed, Senator Taft told the Senate that the omission of the words "interfere with" from Section 8(b)(1)(A) (although they appear in Section 8(a)(1)) would not cause the Board to apply the new subsection any differently since in the past the Board had never held that the words "interfere with" were broader than the words "restrain" or "coerce."

• • •

> Mr. Taft. Mr. President, I have consulted with the attorneys and they tell me that elimination of the words "interfere with" would not, so far as they know, have any effect on the court decisions. Eliminating those words would not make any substantial change in the meaning. I realize that the language to which the Senator from New York objects is perhaps somewhat broad, and certainly I shall join in asking the Senator from Minnesota [Mr. Ball] to accept the amendment, if it is satisfactory to him.
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> • • •
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> Mr. Ball. The Senator from New York has discussed the amendment with me, and I agree with him that the words "interfere with" are very vague. So far as I know in the corresponding unfair practice for employers, no complaint is ever issued on the interference angle. I think when we are dealing with union organizational activities it is even more important that such vague language be eliminated from this section of the bill. So the amendment offered by the Senator from New York to the bill is acceptable to me and, I believe, it is to the co-authors of the amendment.
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> • • •
>
> The Acting President pro tempore. Without objection, the amendment is agreed to.

Senator Taft was obviously referring to various Supreme Court and Circuit Court of Appeals decisions concerning the construction which the Board had placed upon Sec. 8(1). Therefore he must be understood as having assured the Senate that such decisions as the Medo Photo case would apply equally to complaints issued with re-

spect to the corresponding unfair labor practice by labor organizations. In other words, the Senate was conscious of the extensive background of administrative and judicial decisions with respect to Sec. 8(1) of the Wagner Act. Consequently the proposal to insert in the new statute a corresponding kind of unfair labor practice with respect to unions had a much broader purpose than the trial examiner's description of the legislative history of subsection 8(b)(1)(A) would seem to imply.

Nor is our conclusion from the legislative history impaired in any degree by the defeat of another Ball amendment, to which the trial examiner seems to attach significance. The amendment in question, popularly referred to as an attempted ban on industry-wide bargaining, sought, inter-alia, to prohibit dictation by national or international unions to locals on bargainable issues. For example, the sponsors of the amendment gave as an illustration of the abuse they wished to correct the insistence of the United Steel Workers (CIO) during the 1946 strike that none of their locals should settle with their respective employers for any wage increase less than the 18½¢ settlement made with "Big Steel". (Cong. Rec. 4706, 4707).[5]

Obviously a union demand for an 18½¢ wage increase, unlike a demand for a closed shop, is not illegal since in the absence of any maximum or minimum wage statute a wage increase or reduction is always a bargainable issue.

The question, therefore, arises as to whether or not there is any violation of the new act for an international union to insist that its local unions insist without deviation upon certain contract clauses which may not in and of themselves be legally objectionable. We submit that such insistence by an international union is a violation of Sec. 8(b)(1)(A) of the Act and that the defeat of the Ball amendment should not be deemed a persuasive reason for reaching a contrary result.

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[5] Presumably the defeat of this amendment does not have any bearing upon such allegations as those in Sec. VIII, paragraphs 3 and 5; Sec. VI, paragraph 1, or Sec. V, paragraphs 3, 4, 5 and 6. The gist of these allegations is that respondents caused or instructed the locals to engage in conduct which is **ex hypothesi** illegal **per se**, as distinguished from the duty to bargain arising out of a representative status. Obviously a statute which forbids a local organization or its agents to engage in certain kinds of practice must necessarily prohibit parent organizations from causing its subordinate locals or constituent units from engaging in them.

The Ball amendment in question reads as follows:

"The Chief Clerk. On page 4, line 16, after the word 'employers', where it appears the second time in the line, it is proposed to insert the following: 'in the same metropolitan district or country'.

"On page 5 strike out lines 8 and 9 and insert in lieu thereof the following:

> (4) The term 'representative' whether used in the singular or plural means any individual or a labor organization irrespective of whether or not it is a constituent unit of or an affiliate of an organization, national or international in scope, composed solely of employees of one employer, or of employees, or of employees employed in the same metropolitan district or county by different employers.

"On page 16, between lines 15 and 16, insert the following:

> (6) To coerce or compel or attempt to coerce or compel (irrespective of whether or not such coercion or compulsion is authorized by any provision in its constitution or by-laws) a labor organization which is a constituent unit or an affiliate of such labor organization, or any other labor organization, which acts as the representative of employees for collective-bargaining purposes to include or omit or to seek the inclusion in or omission from any collective-bargaining agreement of any particular terms or provisions relating to wages, hours of work, or other conditions of employment."

(Cong. Rec., p. 4568).

This amendment was one of four which was unsuccessfully offered by Senator Ball in the Senate Committee on Labor and Public Welfare when S. 1126 was being formulated. The text of the committee report (S. Rep. 105, 80th Cong., 1st Sess., pp. 30-52) does not show why the amendment was rejected by the committee, but it does state what its legal effect would have been had it been adopted. It would have—

(1) Limited the scope of Board certifications to local as distinguished from national or international unions.

(2) Prevented the Board from treating industrywide associations of employers as a single employer, and

(3) Made it an unfair labor practice for a national or international union to coerce any local union to sign or not to sign a proposed collective bargaining agreement.

Insofar as the defeat of the amendment has any bearing here it must be with respect to its third purpose for no contention is made in this case that any union larger than a local cannot act as the certified or recognized bargaining agent, nor is there any suggestion that the Board may no longer treat an association of employers as a single employer for the purposes of the Act.

It should be noted, however, that both the text and the official explanation of the Ball amendment define the proposed unfair labor practice as the coercion or attempted coercion of a labor organization. What we are here concerned with is coercion of employees. Had the Ball amendment passed it would have made it an independent unfair labor practice for the ITU Council to have enforced those rules which gave it the power to expel or suspend a recalcitrant local. This is not what paragraph 8 of Section VII charges, however.

As our prior discussion of the Medo Photo doctrine has demonstrated, a refusal to bargain on the part of a union amounts to coercion and restraint of the rights of the employees in the bargaining unit. Assuming that the evidence of respondent ITU's successful insistence that its subordinate locals refrain from signing contracts or deviating from paragraphs (a) to (i) of Form P-6A, and remain adamant upon the insertion of such standard ITU clauses as the "normal account" and the "laws" clause amounted to a refusal to bargain on the part of the locals, this meant that every local which acquiesced in these instructions restrained and coerced the employees it was designated to represent. This was quite different, however, from saying that the coercion of the locals per se was a violation of the Act.

There is, to be sure, a superficial resemblance between the purpose of paragraph 7, Section VIII, of the complaint and the objectives sought by the Ball amendment. In fact, Senator Ellender, one of the members of the committee who supported the entire committee bill but

did not concur with Senators Taft, Donnell, Jenner and Smith in supporting the Ball amendment, expressed the view on the floor that its adoption was unnecessary because of the duty to bargain imposed upon unions by the committee bill.

"Mr. Ellender. I still insist that employers cannot be forced to accept, particularly in view of the provisions in the pending bill, such as the one denying the right to strike to compel an employer to join or remain a member of a bargaining association. This would mean that if certain mining operators withdrew from a coal association and Lewis struck to make them bargain on an industrywide basis, the union would be guilty of an unfair labor practice, viz., coercing employers in the choice of a bargaining representative.

"Does not the Senator think that since the bill we are now considering provides for realistic collective bargaining by all concerned, that is, management as well as by the unions, it will also have the effect of dissipating a great many of the evils that prevailed in the last few years because of industrywide bargaining? In other words, the bill makes it an unfair labor practice for a union or an employer to refuse to bargain collectively. Is that true?

"Mr. Taft: That is correct.

"Mr. Ellender. Is it not a fact that because of such a provision in the bill which we are now considering, it will in a measure ameliorate the difficulties which have occurred in the past and which have resulted from industrywide bargaining?

"Mr. Taft. I think it will ameliorate them; yes. I agree with the Senator.

"I do not think, however, that it goes to the basic point. I do not think anything else in the bill will nullify the provisions which give the international, either through certification or through its own constitution, the right to control the welfare of and the final contracts made by hundreds of locals throughout the country."

This colloquy is of considerable significance. It shows that informed Senators on the committee were aware of the distinction between the Ball amendment and the kind of unfair labor practice which paragraph 7 of Section

VIII of the complaint describes. Senator Ellender was saying in effect that the duty of a union to bargain would afford some relief for the kind of abuses Senators Ball and Taft were aiming at, whereas Senator Taft felt that this provision, while helpful, would not provide a full remedy for the different unfair labor practice which he envisaged.

It is true that in this case Respondent ITU at the expiration of the contracts might have elected to fade out of the picture completely, thus leaving the employees free to designate another bargaining representative, or to deal individually with their employers. The union did not do so, however. It signified that it was still acting as the bargaining representative by instructing the locals to serve the termination notice required under Section 8(d) and by sending its scale committees thereafter to confer with employers with respect to the wages, hours and working conditions under which the employees would continue to work. Yet since they did not carry out the function for which they were designated, these representatives did thwart the right of the employees to bargain collectively. It may be true that in some bargaining units a majority were sympathetic with the policy of the union and therefore did not feel restrained or coerced but, as the Medo Photo case and the other cases cited show, this is immaterial.

The teaching of the Medo Photo case is that once the employees have designated a bargaining agent they, as principals, may not waive their right—short of revocation of the agency—to have collective bargaining conducted with that bargaining agent. It must follow that the bargaining agent may not waive that right for them and that in refusing to bargain it coerces and restrains them in the exercise of that right.

III.

STRUCK WORK

The examiner has considered the effect of respondents' insistence upon struck work clauses in both the ANPA and CNPA cases. We believe that his conclusions in respect of these clauses are in each case erroneous. We will show (A) that his conclusions with respect to violations of Section 8(b)(1)(A)[6] and (2) are based upon

[6] Apart from refusal to bargain as a violation of Section 8(b)(1)(A), considered supra.

erroneous assumptions of fact and law: (1) as to the purpose and operation of struck work clauses; (2) that an employer cannot violate Section 8(a)(3) of the Act by the manner in which he chooses persons with whom to have business dealings; and (3) that discriminatory pressures exerted against particular employers but directed against a class of employers are not within the scope of Section 8(b)(2); (B) that his construction of Section 8(b)(1)(A) and (2) would be productive of unfortunate anomalies in the operation of the Act; (C) that his conclusions with respect to Section 8(b)(1)(A) and (2) do not accord with recent judicial authority. In a subsequent portion of this brief, we will also show that insistence upon struck work clauses represents a clear refusal to bargain in good faith under principles long established by the Board.

A. The Examiner's Erroneous Assumptions of Law and Fact.

1. The purpose and operation of the struck work clause.

In reaching his conclusions in respect to violations of both 8(b)(1)(A) and (2) the examiner makes assumptions as to the purpose and operation of struck work clauses which do not accord with the facts revealed by the record in this case.

The underlying factual assumption of the examiner seems to be that the respondents' purpose in insisting on struck work clauses is merely to prevent employer discrimination against ITU members. Nothing could be further from the fact. The only purpose and, in any case, the operation of the struck work clauses is to make certain that all employers whose operations fall within the jurisdiction asserted by the ITU shall, by discrimination in regard to hire, tenure or condition of employment, not merely encourage but require employees to acquire or retain membership in respondent ITU. The examiner begs the question, therefore, when he rejects the contention that these clauses violate Section 8(b)(2) for the reason that the contention "postulates an uncertain future situation in which an unidentified 'other employer' may for purposes of economic advantage decide to violate the law by discriminating against non-union employees." (IR 52, lines 32-35). The fact is that the struck work clauses are deliberately designed to force

such other employers to violate the law by discriminating against non-ITU members.

In his discussion of struck work clauses in relation to Section 8(b)(1)(A) the examiner concludes that:

> "for an employer to refrain or for a union to cause him to refrain, as he has in the past, from doing business with non-union firms with whom he has no current contractual relations or business dealings, involves as to the employees of the non-union firm no unlawful restraint or coercion. It merely leaves the employees of the 'other employers' in the position in which they were." (IR 52, lines 22-28).

Here the examiner assumes that struck work clauses operate in fact only with respect to other employers[7] who presently employ exclusively non-ITU employees or other employers who may in the future determine to violate Section 8(a)(3) by discriminating against ITU members. But this assumption also fails to accord with the facts. Other employers who employ ITU members may at any time be declared unfair by the ITU for any number of reasons, all within the unilateral choice of the union.

Against the background of ITU convention policy it is not a matter for conjecture that any failure by other employers to maintain conditions of employment discriminatorily favoring ITU members would be regarded by the union as an appropriate basis for declaring such employers to be unfair.

Relevant ITU laws make this abundantly clear. Article III, Section 5 of the General Laws of the ITU provides "that subordinate unions may define as struck work (1) composition executed wholly or in part by non-members, and (2) composition or other work coming from or destined for printing concerns which have been declared by the union to be unfair, after which union members may refuse to handle the work classified as struck work.

Article XX, Section 38 of the By-Laws, indicates the circumstances under which an employer may be declared unfair. That Section provides that:

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[7] For convenience we shall refer to the employer from whom the ITU seeks agreement to a struck work clause as "the contracting employer" and to other employers with whom the contracting employer has business dealings or may have business dealings as the "other employers".

> "The International Typographical Union recommends that subordinate unions publish the names of all firms, corporations and individuals engaged in the printing industry which do not pay the scale prices or which do not observe the established customs of the several unions."

Paragraph 1 of the Resolutions (Book of Laws of the ITU, effective January 1, 1948, p. 117) recognizes that an employer may be declared unfair even though he employs in part union men.

Against this background of applicable ITU "Laws" and taking account of the ITU's jurisdictional claims over operators of varitypers and typewriters (General Laws, Article VII, Section 1) it is evident that an employer presently employing ITU members may find himself declared unfair if he does not accede to ITU jurisdictional claims over typists and varitypists (who may be members of no union or of a union other than the ITU) or if he fails, in fact, to maintain closed shop conditions, or if he fails to employ only ITU foremen or in any other way fails to discriminate against non-ITU members within any claimed jurisdiction. Under these circumstances an employer which hires ITU members may presently be on the fair list but tomorrow may be on the unfair list for refusing to accede to enlarged jurisdictional claims or for failure to "observe the established customs of the various unions", as determined by the ITU. Yet the struck work clauses under discussion would require the contracting employer to refuse for this reason to have business dealings with such an employer. These clauses do not operate merely to cause an employer to "continue to refrain, as he has in the past, from doing business with non-union firms with whom he has no contractual relations or business dealings"; they operate equally to require him to discontinue business dealings with any other employer of ITU members who may at any time be declared unfair because of his refusal to discriminate against non-ITU members.

The fact that respondents regard the right to refuse to work on "struck work" as one of the three keystones of the ITU economic structure, and their unyielding insistence upon its incorporation in contracts in one form or another, is prima facie evidence that struck work clauses do in fact operate to accomplish their desired

purpose. By drying up the possible sources of business available to any other employer who does not discriminate in favor of ITU members within the jurisdiction unilaterally asserted by the ITU, these clauses represent attempts to compel such other employers to discriminate against any non-ITU employees they may have and it equally tends to coerce employees into acquiring or retaining membership in the ITU. In the examiner's own language, these clauses are "aimed specifically at a violation of Section 8(a)(3)" (IR 52, line 43).

Although the examiner finds the union's insistence on struck work clauses impeccable, he had no difficulty in perceiving that its insistence upon the Conditions of Employment and the 60-day cancellation clause of P-6A operated to coerce employees and cause employers to discriminate [violating Section 8(b)(1)(A) and (2)] because its effect was to impose "the requirement that the employer maintain conditions consistent with ITU policy, or else risk the alternative of an unstaffed composing room or mail room" (IR 48, lines 13-15).

In our view the requirement of the struck work clauses that the contracting employer do business only with other employers who "observe the established customs of the several unions"[8] presents the contracting employer with the same Hobson's choice. If the contracting employer fails to join in the union's discriminatory program his composing room will be unstaffed; if the other employers fail to discriminate in regard to hire or tenure they will be unable to do business with the contracting employer.

2. The erroneous legal assumption that an employer may, with impunity, refuse to do business for any reason he chooses.

The examiner's conclusion regarding Section 8(b)(1)(A) violations is based in part, at least, upon his assumption that "an employer, without violating the Act, may refuse to do business with whomever and for whatever reason he chooses."[9] From this he concludes that it is no more "restraint and coercion of employee rights for labor organizations to cause an employer to pursue a course of conduct in which he himself may lawfully engage."[10]

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[8] ITU By-Laws, Art. XX, Sec. 38.

[9] IR 52, lines 11, 12.

[10] IR 52, lines 20-22.

But we dispute the proposition assumed by the Examiner that employers have such unlimited freedom under the Act.

We may grant some limited validity to the general proposition that an employer is free to do business with whom he pleases but we also know that he has no right to discriminate for some reasons. An employer may, theoretically, choose to do business only with redheaded employees or employees whose Christian names begin with "W", but Sections 8(a)(1) and (3) of the Act cut across his general rights and prohibit him from choosing to do business only with union employees or only with non-union employees.

Similarly, an employer is free to purchase materials or sell his products to such persons as he may choose and he may, within some limits, discriminate on the most whimsical basis by selling his products only to redheaded men, etc. But if he exercises his general freedom to do business in such a manner as to tend to restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act, we know of no principle of exculpation which will suspend the operation of Section 8(a)(1).

Ordinarily, if an employer chooses to do business only with other persons who employ only union labor or only non-union labor and does not by some other means make the principle of discrimination known, the consequences of such discrimination would not have a tendency to restrain and coerce the employees of such other persons in the exercise of their Section 7 rights. But if the Ford Motor Company were to determine that it would hereafter purchase supplies only from such firms as employed exclusively members of the United Steel Workers of America, and were to publicly announce this to its suppliers and their employees, we have no doubt that the Ford Motor Company would thereby violate Section 8(a)(1) of the Act because such insistence would clearly tend to coerce the employees of the Briggs Body Company into acquiring membership in the United Steel Workers. And if the United Steel Workers, as the representative of Ford Motor Company employees within an appropriate bargaining unit, were to refuse to sign any contract with the Ford Motor Company unless the latter would agree to pursue such a practice, it is evident that such an in-

sistence would in fact tend to effect the prohibited coercion and would therefore be violative of Section 8(b)(1)(A).

The fact is that an employer may violate Section 8(b)(1)(A) or (2) by any conduct which is intended to be and is in fact coercive or discriminatory in relation to employees (whether or not they are his own), including the manner in which he selects the persons with whom he has business dealings.

3. Section 8(b)(2) prohibits attempts to cause violations of Section 8(a)(3) by a class of employers as well as by a particular employer.

The examiner's conclusion that Section 8(b)(2) is not violated is based principally[11] upon his assertion that "the statutory scheme indicates that Section 8(b)(2) was designed to cover situations of direct union pressure applied against a particular employer and aimed specifically at a violation of Section 8(a)(3)" (IR 52, lines 40-43).

This statement is not free from ambiguity. We assume that the examiner conceives Section 8(b)(2) to be applicable to a situation in which the union pressure for struck work clauses would cause the contracting employer to violate Section 8(a)(3) but inapplicable to a

[11] The examiner also rejects the contention that Section 8(b)(2) is violated by insistence on struck work clauses because he finds the contention "based on assumptions entirely too speculative and too remote" (IR 52, lines 3132) and he observes that "the hypothesis postulates an uncertain future situation in which an unidentified 'other employer' may for purposes of economic advantage decide to violate the law by discriminating against non-union employees" (IR 52, lines 32-35). But this can hardly be a principal ground of reliance since uncertainty as to the success of an attempt to discriminate or uncertainty as to the time and precise situation in which, if ever, the attempt becomes successful are not relevant considerations insofar as Section 8(b)(2) is concerned. The examiner recognizes this when he points out in another connection (IR 49, lines 36-50) that:

> "violation of Section 8(b)(2) does not depend upon a showing that Section 8(a)(3) has been actually breached. Nor does it turn upon the presence of proof that any specific individual was the object of discrimination. Section 8(b)(2) is not so narrowly to be construed as to require a direct link in the chain of attempted causation between the Union pressure and a particular employee to be affected thereby. The 'attempt' to compel discriminatory hiring requirements looks forward to a situation where it may be applied. What the statute proscribes is union action, as such, directed toward discrimination. Where, as here, the illegal attempt itself is established, the statute is violated without regard to whether it fails or succeeds, or whether it operates on a class of employees or on specified individuals."

situation in which the contracting employer would not be guilty of such a violation although the effect of the pressure exerted against the contracting employer might cause other employers to encourage membership in a labor organization by discrimination in regard to hire or tenure.

The examiner finds support for this view in the fact that secondary pressures are dealt with by Section 8(b)(4) and he concludes that such pressures cannot, therefore, be within the ambit of conduct outlawed by Section 8(b)(2).

We believe that "the statutory scheme" affords no basis for such a strained construction of 8(b)(2). Textually, Section 8(a)(3) broadly forbids an employer, by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization; and Section 8(b)(2) broadly forbids a labor organization to cause or attempt to cause an employer to discriminate in violation of Section 8(a)(3). Nothing in the language of the Act suggests that the generality of these prohibitions is to be confined to attempts directed at a single employer rather than at a group or class of employers.

The basic purposes of Section 8(a) and (b) are to condemn, without limitation, all conduct which, by discrimination or otherwise, tends in fact to restrain employees in the free exercise of the rights guaranteed them by Section 7. Against the background of the basic legislative objectives, it would be strange indeed to hold that because of the generality of respondent's attempt to cause discrimination their conduct is inoffensive, although the same attempts if directed at a single employer would fall within the condemnation of the Act. Yet such is the result of the examiner's view that because secondary pressures are dealt with by Section 8(b)(4), they cannot fall within the scope of Section 8(b)(2).

Such a result does not commend itself to ordinary common sense nor can the "statutory scheme" be strained to support such an anomaly. The prohibition of Section 8(b)(2) is cast in the familiar language of causation and on its face purports to ban all conduct which causes or attempts to cause an employer to discriminate in ways otherwise forbidden to them. And while the law of causa-

tion is not free from uncertainties in some respects, we supposed it well settled, at least since Scott *v.* Shepherd, 2 Wm. Blackstone 892, that continuity in the chain of jural causes is not, as the examiner would have it, necessarily broken by the intervention of a third person between the actor and the admitted object of his act. Plainly the intervening conduct of the contracting employer is "the child of the occasion"[12] and respondents should not escape the consequences of their insistence on struck work clauses if such clauses do in fact operate to cause other employers to practice prohibited discriminations.

We have already shown that the basic objective of these clauses is to utilize the economic leverage of contracting employers' custom to attempt to cause a whole class of other employers to encourage ITU membership by discrimination against non-ITU employees.

We have also shown that contracting employers, by agreeing to and carrying out their undertakings under the struck work clause, would violate Section 8(a)(1). We may concede, arguendo that contracting employers would not thereby also violate Section 8(a)(3). But the fact that contracting employers violate the most basic provision of Section 8(a) and not the more narrow prohibition of Section 8(a)(3), provides no basis in reason for exculpating respondents if, as we have shown, the contracting employer's violation of Section 8(a)(1) is merely a part of a larger purpose to cause other employers to violate Section 8(a)(3).

Finally, the mere presence of Section 8(b)(4) cannot reasonably be construed to narrow the range of conduct condemned by Section 8(b)(2). On the contrary, the specific variants listed in Section 8(b)(4)(A) through (D) serve to illustrate the range of conduct subsumed under the more general language of 8(b)(1)(A) and (2), just as the Board has held that the conduct singled out in the present Section 8(a)(2), (3), (4) and (5) is subsumed under the more general prohibition of Section 8(a)(1).

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[12] Cardozo, J., in **Wagner v. International R. Co.**, 232 N.Y. 176, 133 N.E. 437.

B. The Examiner's Construction of Section 8(b)(2) Would Be Productive of Unfortunate Anomalies.

It is true that Sections 8(a)(3) and 8(b)(2) prohibit "an" employer from discriminating and a labor organization from causing or attempting to cause "an" employer to discriminate, whereas Section 8(b)(4) deals with attempts to force "any" employer to take certain action. And it may be argued that this disparity lends support to the examiner's view that Section 8(b)(2) deals only with pressures directed against a particular employer.

We think this distinction between the language of 8(b)(2) and (4) is one without a significant difference. But to the extent that it furnishes any textual support for the examiner's construction, it is overridden by the anomalous consequences which would result from adopting this view of Section 8(b)(2).

Assuming that the examiner's construction of Section 8(b)(2) is correct, let us suppose that a contracting employer agrees to the struck work clause and that one of the other employers with whom he does business is subsequently declared unfair by the ITU for failure "to observe the established customs" of the union. At this point, the contracting employer may according to the contract, if he disagrees with the union's determination that the other employer is unfair, (1) give 10 days' notice of his intention to declare the agreement null and void, or (2) refer the dispute to the joint Standing Committee. But since, under paragraph (h) of P-6A the General Laws of the ITU may not be subject to arbitration, the union's unilateral determination may not be altered. If the employer declares the contract void or if, without so declaring, he continues to accept work from the other employer, his ITU employees may then engage in a strike or concerted refusal to work on such goods.

If the struck work clause is to be given any effect at all, it must operate to authorize such a concerted refusal. Yet such a refusal is precisely what Section 8(b)(4)(A) prohibits.

If the struck work clause is not to be given effect, i.e., is to be held void, the occasion for so holding can only be that its operation is to cause discriminations prohibited by Section 8(a)(3). Yet by hypothesis, the union's insis-

tence on this clause does not "cause an employer to discriminate in violation of subsection (a)(3) * * *"

It is evident therefore that if the clause is given effect according to its terms, private parties may, pro tanto, by contract to repeal or suspend the operation of an important provision of the Act; and if it is not given effect, the reason for not doing so is in collision with the primary assumption upon which this construction of Section 8(b)(2) is based.

Elementary canons of statutory construction would require the avoidance of such anomalies even if the disparity between 8(b)(2) and 8(b)(4) were textually compelling. Certainly the difference between "an" and "any" has no such force in the present context.

C. Applicable Judicial Authority Supports Our View of the Effect of Struck Work Clauses.

The construction of Section 8(b)(2) which we urge is also supported by recent judicial authority which was called to the attention of the examiner in our brief but which he evidently overlooked. In Harold Levinsohn Corp. *v.* Joint Board of Cloak, Suit, Skirt and Reefer Makers' Union, et al., ... App. Div. ....., decided April 12, 1948, 22 LRRM 2153, the Appellate Division, New York Supreme Court, First Department, had occasion to consider the effect of a similar struck work clause under the National Labor Relations Act prior to its amendment by the Labor Management Relations Act, 1947. The employer, a manufacturer of ladies' suits, had agreed with the ILGWU that it would send its cut fabrics for sewing only to contractors who employ exclusively members of the ILGWU. The employer sent cut fabrics for sewing to other employers who employed members of another union, ACWA, and under its contract with the employer the ILGWU sought arbitration of this alleged breach of contract. Upon application by the employer, the court stayed the proposed arbitration, holding the struck work clause to be illegal because in conflict with "the spirit and the letter of the labor relations act" (prior to its amendment). The Court said (22 LRRM at p. 2156):

> "The requirement that appellant shall send its cut fabrics for sewing only to contractors who employ exclusively members of the Union, is similar in nature and closely allied to the promise by appel-

lant not to operate any 'non-union' factory itself. The object is to compel appellant to break its relations with its contractors who have been organized by the Amalgamated, unless they, in turn, break their collective bargaining agreements with the Amalgamated, and discriminate without an election under the N.L.R.A. in regard to the hiring of their employees on the basis of union membership. The clear purpose is both to bring about the violation of existing contractual relationships, and to exert economic pressure on contracting firms to violate the public policy of section 8 of the National Labor Relations Act by coercing them to discharge their employees unless they change their union affiliation. It is not the policy of the labor relations acts to permit appellant or these contracting firms, or their employees, to become the victims in this manner of aggressive rivalry between competing unions."

It is evident that in the view of the Court this struck work clause operated to cause the other employer to discriminate in violation of Section 8(3) of the Wagner Act and for this reason held the clause to be illegal. This result follows a fortiori under the amended Act which for the first time expressly forbids union attempts to cause such discriminations. It may be observed that Section 8(b)(2) is not confined to inter-union rivalries but extends to any discrimination.

We think the conclusion inescapable, therefore, that respondents' insistence upon the struck work provisions of P-6A and the "Statement of Intent (Normal Account basis)" advanced in the post-injunction proposals constitute violations of Section 8(b)(1)(A) and (2) of the Act.

We will further show in the next portion of this brief that insistence upon these clauses also evidences a refusal to bargain in violation of Section 8(b)(3) and 8(b)(1)(A).

IV

RESPONDENTS' REFUSALS TO BARGAIN COLLECTIVELY

If, as we have shown, a refusal by a labor organization to engage in collective bargaining is not only an unfair labor practice within the meaning of Section 8(b)(3) but

also constitutes an independent violation of Section 8(b)(1)(A), it is evident that the examiner erred in failing to consider all of the respects in which Form P-6A and the subsequent post-injunction proposals (discussed in detail, infra) evidence refusals to engage in good faith in collective bargaining with employers.

By their unyielding insistence that employers accede to numerous provisions of P-6A and the post-injunction proposals, respondents have evidenced their refusal to bargain collectively in good faith within the long-established principle that the insistence, as a condition precedent to entering in a collective bargaining agreement, that the other party to the negotiations agree to a provision or take some action which is unlawful or inconsistent with the basic policy of the Act represents a refusal to bargain. In re National Maritime Union of America, et al. and Texas Co., et al., 78 NLRB No. 137, 22 LRRM 1289, 1297 and cases there cited, and within the principle that the insistence by one party to negotiations upon a unilateral right to determine particular terms and conditions of employment constitutes bad faith and a refusal to bargain. Aluminum Ore Co. *v.* NLRB, 131 F. (2d) 485, 487 (CCA 7); Singer Mfg. Co. *v.* NLRB, 119 F. (2d) 131, 136-137 (CCA 7); cert. den., 313 U. S. 595; rehearing den., 314 U. S. 708; NLRB *v.* Westinghouse Air Brake Co., 120 F. (2d) 1004 (CCA 3); Matter of Neuhoff Packing, 29 NLRB 746, 766-767, enforced 127 F. (2d) 30 (CCA 6); Matter of V-O Milling Co., 43 NLRB 348; Matter of South Carolina Granite Co., 58 NLRB 1448, 1461.

Because of his view that respondents' refusal to bargain in this case did not constitute violation of Section 8(b)(1)(A), the examiner did not consider the question of refusals to bargain at all in the ANPA case. However, in the CNPA case, where a violation of Section 8(b)(3) was alleged in the complaint, the examiner did consider a limited number of the respects in which respondents are charged with a refusal to bargain. But he declined to consider the effect of respondents' insistence upon clauses relating to the ITU General Laws, jurisdiction, picket line and limitation of liability, asserting that the record is clear that no issue was raised by the publishers in the Chicago negotiations with regard to these clauses. Since each of these clauses was embraced within paragraphs (a) to (i) of Form

P-6A which the examiner found respondents insisted that locals include in any contracts entered into, we think his refusal to consider these provisions was plainly erroneous. In any case, they should have been considered in the ANPA case if, as we have shown, a refusal to bargain should be construed as an independent violation of Section 8 (b)(1)(A).

We turn to a consideration of some of the particular provisions insisted upon by respondents which evidence a refusal to bargain.

1. The Insistence on Struck Work Clauses.

In the CNPA case the examiner considered the question of whether the union's position with regard to clause (g) of P-6A—the struck work clause—constituted a refusal to bargain (CNPA IR, pp. 9-11). It should be observed that clause (g) of P-6A was also included in the post-injunction proposals, along with an alternative clause—the so-called "statement of intent (normal account basis)" designed to accomplish the same result (see infra, "The Post-Injunction Proposals" for further reference to this clause).

Since clause (g) was one of the clauses which respondents required employers to accept without change if any contract was to be reached, we think it plain that respondents were demanding, as a condition precedent to the negotiation of a contract, that employers agree to a provision which violates the public policy expressed in Sections 8(b)(4) and 303 of the Act and the established public policy referred to above against permitting the insistence upon a right unilaterally to fix conditions of employment.

Section 8(b)(4) of the Act makes it an unfair labor practice for unions or their agents to encourage or induce employees to refuse in the course of their employment to handle certain materials for the purpose of requiring their employer to cease doing business with particular persons. Section 303 of the Act makes such encouragement or inducement unlawful and subjects the perpetrators of such conduct to actions for damages.

By these provisions Congress unmistakably declared secondary boycott strikes to be contrary to public policy. This public policy would be effectively nullified if a union could evade the impact of these provisions by the simple device of compelling employers to agree in advance not to accept work from other employers from whom the union

seeks to obtain concession. As is shown by the cases cited above, the Board and the courts have been vigilant to assure that rights guaranteed employees by the Act should not be thwarted by contractual arrangements inconsistent with the basic policies of the Act. And except where it has expressly modified or abrogated certain decisions, Congress clearly intended that the broad principles laid down by the Board and the courts should govern the interpretation of the new statute. We do not understand, therefore, how the Board could approve the attempt to accomplish by collective bargaining contract between unions and employers of a labor objective which Congress has declared to be unlawful when accomplished directly by strikes.

The examiner, however, takes a different view. He asserts that:

> "The only conduct made illegal by statute, and the only conduct declared, therefore, contrary to public policy is for a labor organization, in support of certain stated objectives, 'to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, etc.' The statute does not prohibit an employer and a union from entering into an agreement under which the employer undertakes not to use certain products; nor does it prohibit collective bargaining with respect to that subject. The statute leaves it open for an employer, whether voluntarily or through a collective bargaining agreement, to assist a union in the protection of its working standards by refusing to buy goods produced under non-union conditions. It is difficult to perceive how such an agreement would encourage employees to engage in strikes or concerted refusals to work. It would appear that an agreement not to handle 'substandard' goods, if faithfully complied with by an employer, as it must be presumed it would be, would tend rather to remove the possibility of a situation arising where employees would engage in a strike or concerted refusal to work for the purpose of forcing their employer to cease using products of another employer." (CNPA, IR p. 9, lines 40-49; p. 10, lines 1-9).

We have already pointed out some of the fallacies of this reasoning. It is, we think, evident that such a re-

~~stricted and unrealistic view~~ of the purpose and effect of Sections 8(b)(4) and 303 would have the most anomalous results.

The purpose of Sections 8(b)(4) and 303 was to eliminate an incongruity arising from the failure of Congress to reconcile the policy of the Norris-LaGuardia Act with the Wagner Act. Under the latter act it was made compulsory for an employer to deal with and recognize only the union selected by a majority of his employees. It contained no sanctions however which protected an employer who was dealing with either the statutory representative, or refusing to sign a collusive contract with a union which did not represent his employees, from having economic pressure brought upon him by unions not entitled to recognition. Thus employers complying with the Labor Relations Act in every respect frequently found their ability to obtain supplies or to sell their products to other processors thwarted by secondary boycott strikes in the plants of suppliers or customers with a view to making these persons cease doing business with the primary employer until he capitulated. But the Norris-LaGuardia Act's immunization of the secondary boycott from the injunctive process, denied them any relief.

The object of Sections 8(b)(4) and 303 therefore was not only to relieve the primary employer of such economic pressure, but also to free suppliers and secondary processors from having unions incite their own employees to engage in such harassing tactics. To the extent that these provisions protected employers from such pressures they tended to insure the freedom of workers from restraint and coercion guaranteed in Section 7.

The respondents, as the postcard bulletins and other instructions of the union officials reveal, are aware that it is now illegal for them to incite employees to refuse to handle composition which comes into a composing room from a non-union or "unfair" company or to urge these employees to strike, if the employer insists upon such composition being handled. They argue, however, that they are free to call strikes unless the employer commits himself in advance never to accept composition which comes from a plant which the union characterizes as "non-union", "substandard" or "unfair".

If the respondents are right in their contention, as the trial examiner seems to think, then there is a tremendous loophole in the statute. Consider these two hypothetical cases:

A. The New York Times orders from Typesetters, Inc. (a non-union trade composition house) the composition for an advertisement it has contracted to publish. When this composition comes into the Times composing room, the union instructs the typographical employees to refuse to run any galley proofs, read proof, or lock the forms.

B. The New York Times is considering placing an order with Typesetters, Inc. for the composition of an advertisement it has contracted to publish. The Times typographical contract, having recently expired, the union threatens to call (and later does call) the Times typographical employees out on strike because the employer will not sign a contract requiring the Times not to place such an order.

(In neither case is Typesetters, Inc. a "normal account" of the N. Y. Times).

Under the trial examiner's theory of the law, the union in situation A violates Section 8(b)(4)(A). But in situation B the union not merely avoids any finding under Section 8(b)(4)(A)—which we are willing to assume, arguendo—but gets off scot free, for it should be observed that in the ANPA case (9-CB-5) and in the Chicago Publishing case (13-CB-6) the trial examiner finds in effect that such union conduct is neither an unfair labor practice under Section 8(b)(1) nor Section 8(b)(3).

The Act contains no such loophole for the trial examiner's theory disregards years of Board precedent. In dealing with unfair labor practices by employers the Board has repeatedly found ingenious schemes invented to frustrate employee rights under Section 8(a)(3) and 8(a)(1) to amount to refusals to bargain under Section 8(a)(5) even though such schemes did not amount to literal violations of the other subsections.[13] Thus, if an employer conditioned

[13] **Medo Photo Supply Corp. v. NLRB**, 321 U.S. 678, affirming 43 NLRB 989; **National Licorice Company v. NLRB**, 309 U.S. 350, enforcing 7 NLRB 357; **NLRB v. Winona Textile Mills**, 160 Fed 201 (CCA 8) (withdrawal of closed shop demand); **NLRB v. Reed & Prince Mfg. Co.**, 118 Fed. 874, 883 (CCA 1), certiorari den. 313 U.S. 595 (promise not to request closed shop or check-off); **Hartsell Mills Co. v. NLRB**, 111 F. (2d) 291, 292 (CCA 4) (withdrawal of charge filed with NLRB;—see 18

the making of a contract upon the employees' agreement not to join unions the Board would at least deem him to have violated Sections 8(a)(1) and 8(a)(5) even though he had discharged no union men or rejected union applicants in violation of Section 8(a)(3). Nor would the Board have been deterred from issuing a remedial order fully effectuating the policies of the Act by any plausible argument to the effect that all the employer was doing was requesting the employees to refrain from asserting a right the Act did not require them to exercise. Yet this is in effect what respondents' position boils down to. We cannot believe that the Board would view a union's adamant demand for a contract which would defeat the policy of the Act in any more favorable a light than an employer's stratagem for frustrating its basic policy. We therefore submit that the union's insistence upon a struck work clause, whether incorporated in the form of union "laws", the substandard conditions or the normal account clause was a violation of Section 8(b)(3) and Section 8(b)(1).

In our brief we have also pointed out that respondents' insistence upon the inclusion in contracts of these struck work clauses evidences a refusal to bargain for the additional reason that such insistence is inconsistent with the policies of the antitrust acts and that, in fact, employer acquiescence in these clauses would subject them to liability for violation of the Sherman Act, as amended. In his Intermediate Report in the CNPA case the examiner takes passing note of this argument but dismisses it with the observation that "the authorities appear to point to a contrary conclusion." (CNPA IR p. 10, lines 45-46. Allen

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[13] (Continued)
NLRB 268, 279-280); **Stewart Die Casting Corp. v. NLRB**, 114 F. (2d) 849, cert. den. 312 U.S. 680 (recognition of majority union as representative only of employees who were union members); **McQuay-Norris Mfg. Co. v. NLRB**, 116 F. (2d) 748 (CCA 7), modified on rehearing 119 F. (2d) 1009, cert. den. 313 U.S. 565; **NLRB v. Louisville Refining Co.**, 102 F. (2d) 678 (CCA 6) (negotiation with local, but not with national union); **NLRB v. George Pilling & Co.**, 119 F. (2d) 32, 35 (CCA 3) (organization by the union of the employer's competitors in the industry; see also 1 NLRB 349, 4 NLRB 596, NLRB 1, and 37 NLRB 334); **Matter of Kellogg Switchboard & Supply Co.**, 29 NLRB 847 (termination of strike caused by employer's unfair labor practices); **Matter of New York Times**, 26 NLRB No. 112 (promise not to demand closed shop); **Matter of Scripto Manufacturing Co.**, 36 NLRB 411, 426-428 (union incorporation or giving bond; additional bond cases to the same effect are 21 NLRB 1240, 1253, 20 NLRB 211, 228-229, 231-232; 71 NLRB No. 144); **Reliance Mfg. Company**, 28 NLRB 1051 (removal of picket); **Poultrymen's Service Corp.**, 41 NLRB 444 (abandon boycott and picketing); **Golden Turkey Mining Co.**, 34 NLRB 760 (withdrawal of charges).

Bradley *v.* Local No. 3, 325 U. S. 797, and United Brotherhood of Carpenters *v.* United States, 330 U. S. 395, the most recent controlling authorities on the subject, may appear to the examiner to point to a contrary conclusion but we submit that an objective examination of the controlling facts of each of those cases, and particularly of the Brotherhood case, can leave no doubt that the businessmen who agreed under union insistence to the struck work clauses involved in those cases are in the identical position of newspaper publishers who agree to respondents' struck work clauses.

Apart from the foregoing considerations the insistence by respondents upon the right of the ITU to define what work shall be regarded as work performed under "substandard conditions" represents an insistence by one party to collective bargaining upon reservation of the right by unilateral action to effect conditions of employment, and is equally repugnant to the long-recognized policy underlying the Act which forbids such a reservation. Trial Examiner Ringer recognized this in the Baltimore Graphic Arts case (5-CB-1). But the examiner dismisses this contention, insofar as the CNPA case is concerned, with the observation that since the only position taken by the employers was that any struck work clause was illegal it cannot be said that the union "insisted" on unilateral action or that its position evidenced bad faith. Since the examiner recognizes elsewhere (see, for example, IR pp. 18, 19) that respondents insisted that locals make no deviation from clauses (a) to (i), inclusive, of Form P-6A, we are unable to see how he can disregard such insistence for the present purposes.

2. Insistence on Unilateral Determination of Jurisdiction.

One of the three major "rights" which respondents seek to preserve is the right of the ITU to define its own "jurisdiction". The ITU has defined its jurisdiction broadly. Section 1 of Article I of its constitution (Bd. Ex. 46-hh) states that the union's jurisdiction shall include "all branches of the printing and kindred trades other than those over which jurisdiction has been conceded by agreement". The same Section says: "The International Typographical Union reserves the right to re-establish jurisdiction over any branch of the industry when the vital

interests of the union are affected. The Executive Council is hereby authorized to take such action when deemed necessary to the welfare of the International Typographical Union". Section 12 of Article III of the General Laws states that "it is the unalterable policy of the International Typographical Union that all composing room work or any machine or process appertaining to printing and the preparations therefor, belongs to and is under the jurisdiction of the International Typographical Union. Subordinate unions are hereby directed to reclaim jurisdiction over and control of all composing room work or any machinery or process appertaining to printing and the preparations thereof now being performed by non-members.

Section 1 of Article VII provides that the International also "claims jurisdiction over all duplicating machines, such as typewriters and vari-typers, etc., the product of which is actually used in off-set printing." (Bd. Ex. 46-hh).

It was early recognized by the International Typographical Union that the unilateral assertion of jurisdiction was contrary to the Act. Speaking of the passage of the Act, Randolph stated to the Cleveland convention "they have set out to force an NLRB determination of what jurisdiction your union shall exercise." Postcard Bulletin No. 95 reads, in part, "the T-H-L will interfere with your jurisdiction over work." Randolph clearly stated that the union could not permit the Board to rule on a subject so vital to the union.

Paragraph (a) of Form P-6A obligates the employer to recognize the local union as the exclusive bargaining representative of "all employees subject to the latter's jurisdiction" and by clause (d) the employer agrees that he will not assign any work "traditionally performed by journeymen and apprentice printers to any employee other than journeymen and apprentice printers, as defined by the party of the second part." The party of the second part, that is, the union, obviously would act as a substitute for the Board in case of disagreement. The clause also provides that in the event of disagreement the employer's remedy is cancellation of the contract. The employer is precluded from seeking "outside assistance in the determination" of this proposal.

The so-called "explanation of change in strategy" which accompanied the issuance of Form P-6A pointed out very

plainly that it was intended to preserve the union's jurisdiction. Obviously the contract is a mere subterfuge designed to preserve the "right" of unilateral determination of jurisdiction.

In the post-injunction proposals respondents accomplish the same purpose by their jurisdiction clause, which defines existing composing room operations to be within the jurisdiction of the union and, in addition, requires that none but journeymen, as defined in the contract, shall be permitted to work on any process, machinery, or equipment affecting composing room work not in use on the effective date of the contract or any such process, machinery, or equipment used as an evolution of or substitute for current purposes, machinery or equipment.

Employer acquiescence in respondents' insistence upon the right of unilateral determination of "jurisdiction" would frustrate the entire purpose and policy of the Act. Section 7 guarantees to employees the right to select representatives of their own choosing. This right of selection must be exercised within the framework of an "appropriate unit" to be determined by the Board. It is the obligation of the employer to bargain with a representative so chosen by his employees. In an effort to curb "jurisdictional strikes", Congress has in Section 8(b)(4)(D) made the encouragement of strikes, or concerted refusals to work, with the object of forcing an employer to recognize a union's unilateral determination of its jurisdiction, an unfair labor practice. Except as the employees themselves have chosen a bargaining representative in a particular class of work, the Act leaves the matter of assignment of work as between employees in one craft or trade, or one labor organization, to the employer. Manifestly, the insistence by the ITU and its local unions upon retention in contracts, or its own international laws, of this right of unilateral determination is not bargaining in good faith.

The vice of paragraph (d) of Form P-6A when read in conjunction with paragraph (b), and of the jurisdiction provision of the post-injunction proposals may be demonstrated by reference to one of their admitted objectives: the assertion of jurisdiction over varitype operators (Sec. 1, Art. VII, General Laws). The varitype machine differs from the standard office typewriter only in that it has a mechanism for "justifying" the lines, i. e., the right-hand

as well as the left-hand margins are even. The typed sheets of paper can then be photographed and an engraving made which may then be sent to the stereotyper and thence to the presses.

Obviously varityping is no more a composing room operation than the operation of a typewriter. Varitypers have not heretofore been significantly organized by the ITU in the newspaper industry although the development of this machine is by no means a recent one.

It may be conceded that the inclusion in a bargaining unit of a new manufacturing process which differs in only a minor degree from existing processes is a legitimate subject of collective bargaining. But once an existing bargaining unit has been established by contract or Board decision the Board has never allowed a union to enlarge its jurisdiction without giving the employees outside the unit an opportunity to vote. In this instance, adoption of the new processes language in the jurisdictional clause would mean that employers would agree that clerks operating varityping machines would have to be placed in composing room units irrespective of their wishes—and possibly run the hazards of the competency tests.

By instructing its locals to obtain such agreements from employers the ITU is obviously seeking to do exactly what other printing trades unions involved in jurisdictional controversies have been prevented from doing by Board decision. Albert Love Enterprises, d/b/a Foote & Davies, 66 NLRB 417. See also NLRB *v.* National Broadcasting Co., 150 F. (2d) 895, enf'g 61 NLRB 161.

It should be noted that there is far less difference between offset press and letter press operations than there is between composing room work and varityping. By encouraging such jurisdictional demands therefore, the ITU plainly seeks to nullify the policy of Sec. 8(b)(4)(D).

3. The Picket Line Provision.

Paragraph (f) of Form P-6A provides that the parties agree that "no member of the union, second party hereto, shall be required or expected to cross a picket line established by any subordinate union of the International Typographical Union."

This provision is carried forward without change into the post-injunction proposals.

These provisions are also deficient because of their conflict with the policy against unilateral fixing of working conditions. It would be possible to bargain collectively in good faith for a picket line provision in which the obligation of the union to refrain from strikes should cease upon establishment of a picket line by another union not subject to control by one of the contracting parties. But paragraph (f) contemplates no such provision. Under ITU "laws" all contracts of a subordinate union must be approved by the ITU and a strike by a subordinate local may not be authorized except by the ITU. The contract provision in question, therefore, would render the contract subject to cancellation upon the happening of an event wholly within the control of the ITU.

The provision was plainly designed to frustrate the purpose of Section 8(d) and the operation of Section 301 of the Act. It must therefore be regarded as evidence of a refusal to bargain in good faith.

4. The Limitation of Liability Clause.

Paragraph (i) of Form P-6A would limit the liability of either party for breaches of contract to $25.00. This limitation of liability is carried forward without change into the post-injunction proposals.

These provisions alone would deprive any agreement of the status of a "contract" as that term is used in the Act and, in any case, so conflict with the public policy expressed in the Act as to evidence a refusal to bargain.

It is evident that this limitation of liability to the absurdly trivial sum of $25.00 bears no actual or reasonably expected relationship to the actual damages which newspaper publishers in any of the commercial centers here involved would sustain if a work stoppage of only one day occurred. The provision cannot, therefore, be regarded as an example of the familiar agreement providing for liquidated damages bearing a real relation to actual damages suffered, or one providing that such damages may be fixed by arbitrators rather than a court. It is obviously a provision designed to provide in substance complete exculpation for illegal breach of contract.

Its effect must be assessed in relation to the provisions of the Act and the public policies expressed therein.

As in shown by Section 1 and the "Findings and Policies" set forth in Section 1 of the National Labor Relations Act,

as amended (Sec. 101), the principal reliance of the Act is "upon the practice and procedure of collective bargaining" to eliminate obstructions to the free flow of commerce. In a very real sense most of the provisions of the Act are designed to further collective bargaining and to reinforce the major guarantee of rights in relation to this vital matter. Section 8(d) of the Act defines collective bargaining as,

> "• • • the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith, with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party • • •" (Underscoring supplied.)

Congress thus removed any doubt that the collective bargaining which it seeks to promote includes the formation of written contracts establishing and governing the relationships between employers and labor organizations in industries affecting commerce.

In this context the provisions of Section 301 must be read. Since Congress relied so completely upon the practice and procedure of collective bargaining, culminating in the formation of contracts between employers and labor organizations governing industrial relations, it is not surprising that it sought to reinforce this reliance upon contract as a method of promoting the free flow of commerce. If contracts are to serve the legislatively desired end, they must be scrupulously respected by the parties to them. And to promote this end, they should be readily enforceable against a party who violates them. Section 301 is comprehensively designed to accomplish this objective.

The legislative history of this section reveals the concern of Congress over the difficulties presently existing under the local law of many states in obtaining satisfactory enforcement of the obligations of labor organizations under collective bargaining contracts. In reporting the provisions of Section 301 of S. 1126 which became Section 301 of the present Act, the Senate Committee on Labor and Education stated (S. Rept. 105, 80th Cong., 1st Sess., pp. 15-17):

"The committee bill makes collective-bargaining contracts equally binding and enforceable on both parties. In the judgment of the committee, breaches of collective agreement have become so numerous that it is not sufficient to allow the parties to invoke the processes of the National Labor Relations Board when such breaches occur (as the bill proposes to do in title I). We feel that the aggrieved party should also have a right of action in the Federal courts. Such a policy is completely in accord with the purpose of the Wagner Act which the Supreme Court declared was "to compel employers to bargain collectively with their employees to the end that an employment contract, binding on both parties, should be made." (H. J. Heinz & Co., 311 U. S. 514).

"The laws of many States make it difficult to sue effectively and to recover a judgment against an unincorporated labor union. It is difficult to reach the funds of a union to satisfy a judgment against it. In some States it is necessary to serve all the members before an action can be maintained against the union. This is an almost impossible process. Despite these practical difficulties in the collection of a judgment against a union, the National Labor Relations Board has held it an unfair labor practice for an employer to insist that a union incorporate or post a bond to establish some sort of legal responsibility under a collective agreement.

"President Truman, in opening the management-labor conference in November, 1945, took cognizance of this condition. He said very plainly that collective agreements should be mutually binding on both parties to the contract:

> We shall have to find methods not only of peaceful negotiations of labor contracts, but also of insuring industrial peace for the lifetime of such contracts. Contracts once made must be lived up to and should be changed only in the manner agreed upon by the parties. If we expect confidence in agreements made, there must be responsibility and integrity on both sides in carrying them out.

"If unions can break agreements with relative impunity, then such agreements do not tend to stabilize

industrial relations. The execution of an agreement does not by itself promote industrial peace. The chief advantage which an employer can reasonably expect from a collective labor agreement is assurance of uninterrupted operation during the term of the agreement. Without some effective method of assuring freedom from economic warfare for the term of the agreement, there is little reason why an employer would desire to sign such a contract.

"Consequently, to encourage the making of agreements and to promote industrial peace through faithful performance by the parties, collective agreements affecting interstate commerce should be enforceable in the Federal courts. Our amendment would provide for suits by unions as legal entities and against unions as legal entities in the Federal courts in disputes affecting commerce."

Section 301 of the Act is thus designed to implement the basic public policy of the Act by reinforcing the practice and procedure of collective bargaining by encouraging the observance of contracts arrived at by that practice and procedure.

In these circumstances we think it evident that the rights conferred by Section 301 on parties to contracts in the public interest may not be waived by such a provision as that here involved. Where a private right is granted in the public interest to effectuate a legislative policy, waiver of the right so designed to promote the public interest is not permitted by the courts when such a waiver would defeat the legislative policy sought to be effectuated. Brooklyn Savings Bank *v.* O'Neill, 324 U. S. 697, 704 and cases there cited; Midstate Horticultural Co. Inc. v. Pennsylvania R. Co., 320 U. S. 456.[14]

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[14] This case holds that a shipper's waiver of the 3-year limitation of Section 16 of the Interstate Commerce Act on suits by a carrier to recover charges "is invalid as being contrary to the intent and effect of the section of the Act." The Court said, at p. 361:

"Section 16 is an integral part of the Interstate Commerce Act and of the comprehensive scheme of regulation it imposes. The Act is affected throughout its provisions, with the object not merely of regulating the relations of carrier and shipper inter se, but of securing the general public interest in adequate, non-discriminatory transportation at reasonable rates. Accordingly, in respect to many matters concerning which variation in accordance with the exigencies of particular circumstances might be permissible, if only the parties' private interests or equities were involved, rigid adher-

It may be argued that employers do not labor under the handicaps of unequal bargaining power such as was involved in the Brooklyn Savings Bank case, supra. Without conceding this proposition, particularly in view of the highly integrated character of the I.T.U. and its subordinate locals throughout the country, it is evident that the public policy which animated the Congress was explicitly designed to impose upon labor organizations as well as employers the fullest measure of responsibility for the faithful execution of collective bargaining agreements. And while some reasonable limitation of liability might be an appropriate subject for collective bargaining between employers and labor organiations, that problem is not involved here since this provision provides complete exculpation and not reasonable limitation on liability.

Apart from the fact that this provision is so offensive to the public policies expressed in the Act as to be wholly invalid, the foregoing discussion of the policies sought to be effectuated by Congress makes it plain that this provision is at the very least utterly inconsistent with a policy which Congress deemed it important to promote. Under these circumstances it is evident that respondents' insistence upon this provision amounts to a refusal to bargain in good faith under the well-established principles enunciated in the judicial and Board cases referred to above.

5. The Insistence on Paragraph (c) Relating to the General Laws of the ITU

Paragraph (c) of Form P-6A provides that:

"(c) It is understood and agreed that the General Laws of the International Typographical Union, in effect January 1, 1947, not in conflict with law or this contract, shall govern relations between the parties on conditions not specifically enumerated herein."

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[14] (Continued)
ence to the statutory scheme and standards is required. This 'obviously may work hardship in some cases, but it embodies the policy which has been adopted by Congress in the regulation of interstate commerce in order to prevent unjust discrimination.' **Louisville & Nashville R. Co. v. Maxwell**, 237 U. S. 94, 97.

"With setting in such a statute, Section 16 expressed the specific policy of the Act with reference to the assertion of stale claims. On the section's face, this policy is one of uniformity and equality of treatment, as between carrier and shipper."

A substantially identical provision is contained in the post-injunction proposal. The book of laws of the ITU contains the constitution, by-laws, general laws, and convention laws of the union. It is the general laws with which we are here concerned. Article II, 2 (c) of the Constitution provides that the "general laws shall contain only any and all laws relating to contracts and scales of prices; conditions of employment and the relation of subordinate unions and individual members to the employer". As shown by Article I of the constitution, the local subordinate union receiving a charter from the ITU receives it on condition that "said union forever and under any and all circumstances shall be subordinate to and comply with all the requirements of the constitution, by-laws and general laws or other laws of the International Typographical Union as they may from time to time be altered or amended; that said union shall for all time, be guided and controlled by all acts and decisions of the International Typographical Union as they may from time to time be enacted * * *"

Within this framework of authority, the general laws themselves prescribe the basic nature of the relationship between local unions and employers. The local union is the contracting party with the employer (Article III, Sec. 1). No local union is permitted to sign a contract "guaranteeing its members to work for any proprietor, firm or corporation unless such contract is in accordance with International Law and approved by the International President". (Article III, Sec. 2). The laws of the International Typographical Union may not be submitted to arbitration (Article III, Sec. 1).

The General Laws, of course, have a great number of provisions which directly regulate wages, hours and other terms and conditions of employment. The collective bargaining policy adopted at the annual convention in Cleveland in August, 1947, is an addition to Article III, Section 1, of the General Laws. We are not here concerned with the internal relationships of the union, its subordinate local unions and the members. These relationships are governed by the constitution and by-laws, not by the general laws. The problem here is whether the union may impose these general laws upon employers and thus remove them from the area of collective bargaining.

This provision of Form P-6A is one of those which respondents directed each local to insist upon. Under no circumstances was it to be altered or omitted. It seems plain that respondents cannot thus remove from collective bargaining any discussion of the matters which pertain to wages, hours, and the terms and conditions of employment. In short, the subject matter which is embraced within the General Laws of the ITU within this area must, upon the request of employers, be discussed and negotiated in a *bona fide* attempt to reach agreement. *Aluminum Ore Co.* v. *NLRB, supra; Singer Manufacturing Co.* v. *NLRB, supra; NLRB* v. *Westinghouse Air Brake Co., supra; Matter of Neuhoff Packing Co., supra; Matter of V-O Milling Co., supra; Matter of South Carolina Granite Co., supra.* In the *V-O Milling Company* case, *supra,* the employer refused to give his collective bargaining representative any authority to change the employer's current policies. It was held that such tactics showed a lack of good faith and revealed "a determined course of deliberate non-compliance" with the Act. (p. 360). This very practice by a subordinate local of the ITU was recognized as a refusal to bargain in *Times Publishing Co.,* 72 NLRB No. 128, 19 LRRM 1199.

Our view that this "laws" clause evidences a refusal to bargain is reinforced by the fact that no machinery is provided for determining which of the General Laws are within the exception provided for "laws" in "conflict with law". Many of these General Laws are in conflict with the Act and other statutes. But respondents do not concede this or at any rate respondent Randolph has consistently refused to state what "laws", if any, respondents conceive to be "in conflict with law". Under these circumstances, only respondents may, under these "laws", interpret them. They thus reserve the further right to make this unilateral determination.

V.

THE POST-INJUNCTION PROPOSALS.

The ITU bargaining policy since August 1947 has been characterized by three tactical phases. Until October 6, 1947, the policy was to require locals to refuse to enter into any contracts and to insist instead upon the imposi-

tion of Conditions of Employment. After October 6, 1947, the Form P-6A phase was initiated accompanied by the "Explanation of the Change in Strategy", under which employers were given the option of either signing these forms or granting a wage increase and maintaining the old conditions of employment in composing rooms.

A shift in this policy occurred late in March or early in April, 1948, pursuant to which subordinate unions were authorized by respondent ITU to negotiate contracts for a term provided certain clauses recommended by the ITU Executive Council were included. This evidence was brought out at the hearing through the introduction by Board counsel of two documents sent out from respondent ITU headquarters to all the locals. One was entitled "Instructions and Advice" dated March 31, (Bd. Ex. 83) and the other "Contract Provisions Which May be Proposed in Collective Bargaining During Pendency of Federal Court decree" (the post-injunction proposals).

It is evident that in promulgating such advice and instructions to the locals, respondent ITU was still continuing in all respects the course of conduct which the complaint alleges in this case is violative of Sections 8(b)(1)-(A) and (B), 8(b)(2) and 8(b)(6).

Respondents' counsel objected to the introduction of these documents on the ground that they were issued under the coercion of an injunction issued by the United States District Court for the Southern District of Indiana on March 27 in *Evans* v. *International Typographical Union, et al.*, and asked the trial examiner to take judicial notice of this proceeding (Tr. 3214). The trial examiner correctly, in our view, overruled this objection, after Board counsel had stipulated that the evidence of the change in the ITU's course of action was not offered as an admission of guilt but simply to show that after the injunction date respondents continued to engage in the unfair labor practices alleged in the complaint (Tr. 3217).

The documents (Bd. Ex. 83) indicate on their face that they incorporate a new formula which had been worked out in part with the New York commercial printing association shortly before the issuance of the injunction decree. Judicial notice may be taken of the report of Trial Examiner Myers in cases No. 2-CB-30, 4-CB-12 and 2-CB-39 (Tr. 61, 62, 63), in which the extension of the New York commercial printing formula to other printing cen-

ters is described and the conclusion reached that "an analysis of the new contract proposals reveals that the revised verbiage is merely a cloak for ITU's tireless pursuit of its 1947 convention program."

In his Intermediate Report the trial examiner considered only two features of the post-injunction proposals: the competency and foremen clauses. His failure to consider other features of the post-injunction proposals is, we suppose, attributable to the fact that he had already reached the independent conclusion that struck work clauses, jurisdiction and picket line clauses of P-6A did not independently violate Sections 8(b)(1)(A) or (2) and to the further fact that he had already concluded that a refusal to bargain does not constitute an independent violation of Section 8(b)(1)(A).

The post-injunction proposals contain certain provisions taken *verbatim* from Form P-6A. These include: (1) the claim for jurisdiction over new processes; (2) the "laws" clause; (3) the picket line clause; and (4) the limitation of liability clause. Each of these clauses has already been discussed *supra,* "The Refusals to Bargain", and that discussion will not be repeated here.

The post-injunction proposal also contains certain other clauses which, although cast in new language, are designed to accomplish the same objectives as the earlier Form P-6A. These clauses include the competency clause, the hiring clause and the normal account clause.

We will show that respondents' insistence that locals include these provisions in any contracts to be executed would require employers to violate Section 8(a)(3) and evidence refusal to bargain in good faith.

1. Competency and Foremen Clauses

With respect to the competency and foremen clauses, the examiner stated that the post-injunction phase of the case was developed solely in conjunction with the New York City negotiations and that there is no other evidence in this record to indicate how the ITU General Instructions were actually applied (IR, p. 54, lines 49-52). According to the examiner's analysis of the competency and foremen clauses they can be held illegal only if "the record can be said to support a finding either (1) that the ITU attempted to impose upon the publishers competency

clauses illegally discriminatory upon their face, or (2) that it was the Respondents' purpose and design to interpret and apply the competency standards—although not illegal upon their face—in such a manner as to cause employers to violate Section 8(a)(3)." The examiner concluded that "the record of this particular case, possibly because the matter was prematurely litigated, is insufficient to support either of these findings" (IR 55, lines 23-32).

We think the record affords no basis for confining consideration of the post-injunction proposals to the New York City negotiations. The record shows that these proposals were sent to all locals and that respondents' "recommendation" of them had the same imperative quality as their previous recommendation of clauses (a) to (i) of Form P-6A. Moreover, we will show that the competency and hiring clauses are illegally discriminatory on their face and that in any case the background of respondents' conduct, as reflected by the total record in this case, requires the conclusion that they will be applied by respondents in such a manner as to cause employers to violate Section 8(a)(3).

These clauses, so obviously drawn to enable the ITU to retain its three historic prerogatives, are so evidently discriminatory on their face as to make evidence concerning their actual operation wholly unnecessary. Moreover if assurance were necessary that respondents intended these clauses be discriminatorily applied, extrinsic evidence is unnecessary to demonstrate that the hiring and apprentice control provisions are deliberately designed to make it a practical impossibility for qualified non-members of the ITU to secure employment as journeymen as opposed to ITU members and for qualified non-members of the ITU to advance from apprentices to journeymen without joining the ITU.

The post-injunction proposals (Bd. Ex. 85) contain the standard "laws" clause which was part of Form P-6A and "employment clause" reading as follows:

"Employment"

"It is agreed that all foremen of Composing Rooms shall be members of the union in good standing.

"Composing room employees shall be employed, receive orders from, laid off and discharged by the fore-

man and by none other. In the absence of the foreman he shall designate and post who will be the foreman during his absence; provided, that nothing in this section shall interfere with instructions being given by others for the proper execution of a job, when same is deemed necessary by the foreman.

"Applicants for work by others than those holding priority rights in the composing room must be made only to the foreman, who is the only person having the authority to employ and assign journeymen in the composing room. Provided, that nothing in this section shall be construed to conflict with the rights of journeymen to employ competent substitutes without consultation or approval of the foreman."

They also include after the second paragraph under the heading "Jurisdiction" a competency clause, reading as follows:

"The work of the composing room shall be performed only by journeymen and apprentices. Apprentices may be employed only in accordance with the ratio of apprentices to journeymen provided in Section ..... of this contract. Since it is the desire and intent of the parties to assure in so far as possible the continued maintenance of a high degree of skill in the journeymen classifications and a correspondingly high degree of quality and quantity of production, it is mutually agreed that journeymen are defined as: (1) employees who have completed approved apprentice training as provided in this contract; (2) journeymen members of the Union; or (3) applicants for work in a composing room who, upon reference to the Joint Examining Board by the party of the first part, secure a certificate of competency duly issued under procedures established by the Joint Examining Board. The Joint Examining Board shall be composed of two representatives of the employer and two representatives of the union who shall give such applicants for work the same degree of examination for competency as is given to apprentices seeking to qualify as journeymen." (Emphasis supplied.)

The combination of the "laws", "employment" and "competency" clauses clearly represent an attempt to cause employers to violate section 8(a)(3). Respondent ITU has never departed from its announced determination

to avoid union shop elections under Section 9(e). Consequently none of its locals are entitled to any form of union security without compliance with this subsection and with subsections 9(f), (g) and (h).

Section 8(a)(3) does not merely prohibit a closed shop. It prohibits any discrimination which encourages union membership unless the terms of the proviso are complied with.

Under these provisions employees may be hired, laid off and discharged only by foremen who are required by the proposed contract to be members of the union in good standing subject under ITU "laws" to discipline by the ITU. Under the ITU "laws" such foremen may lose their employment and other valuable rights and benefits for failing or refusing, in accordance with their ITU membership obligation, to "use all honorable means * * * to procure employment for members of the International Typographical Union in preference to others." (1948 ITU Book of Laws, p. 17).[15]

Further obvious discriminatory preference of ITU journeymen members over qualified non-members of the ITU is effected by the requirement that journeymen ITU members, regardless of their prior experience or inexperience, and possible incompetence, shall automatically be eligible for employment whereas all other applicants who are not members of the ITU, regardless of their prior experience and competency, must take a test not required of ITU members in order to qualify for employment. Moreover, non-members of the ITU must demonstrate their competency to the

[15] When interrogated as to whether ITU foremen were bound by this obligation, Mr. Randolph at first hedged his answer with the broad generality that any obligation in the ITU "laws" in violation of Federal law would be enforced. (Tr., Hu 15, April 30) but later said that foremen were not bound in this respect (Id. 17). He admitted, however, that no notice was given to members either before or after August 22 telling them that they were no longer obliged to carry out or fulfill this oath. Moreover, at the Printing Industry hearing (Case No. 2-CB-30) a day or two later Randolph denied that he had ever specifically said that the foreman's oath was no longer binding or was in conflict with Federal law. (Case No. 2-CB-30, Tr. 1662, 1663), and we ask the Board to take judicial notice of this. It is therefore difficult to avoid the conclusion that the ITU insistence that foremen be union members and have final authority in the matter of hiring was not a part of its campaign to maintain closed shop or preferential hiring conditions in newspaper composing rooms. It is significant that the Book of Laws containing this oath was issued several months after the annual convention at Cleveland, at which time a number of amendments to the "laws" were made because of the Taft-Hartley Act. No amendment was made to the language of the oath.

satisfaction of a Joint Examining Board on which ITU members (obligated to give preference to ITU members in regard to employment) have equal representation, without any procedure for breaking a tie vote, thus giving the ITU a veto power in relation to any non-ITU applicant for employment.

The other possible avenue of admission to the status of journeymen, i.e. by the apprenticeship training system, is also effectively subjected to discriminatory ITU control in virtue of the contract provision that apprentices shall be selected, trained and examined for advancement from one stage to another and, ultimately, to the status of journeyman by a Joint Apprenticeship Committee on which ITU members (obligated to give preference to ITU members in regard to employment) have equal representation, without any provision for breaking a tie vote, thus giving the ITU a veto power here also. And, because of the omission in the post-injunction proposals of any criteria for the selection, training and examination of apprentices for advancement, the ITU members of the Joint Apprenticeship Committee would be governed in their conduct by the ITU General Laws[16] which are incorporated into the proposal by reference. It is highly unlikely, to say the least, that apprentices confronted with this required procedure and the knowledge that they must satisfy the ITU members on the Joint Apprenticeship Committee before advancing to the status of journeyman would resist the pressure to ease their progress by joining the ITU.

Although the examiner could find nothing discriminatory on the face of these provisions, it seems plain to us that without more they would require employers to discriminate against non-members of the ITU and in favor of members. As between two equally qualified journeymen, one an ITU member and the other a non-member, the employer would be compelled to hire the ITU member (who automatically qualifies for employment under the competency clause) and reject the non-member (assumed to be equally competent)

[16] These "laws" require that apprentices (1) be first approved by the ITU subordinate local, (2) be listed by the local union secretary and upgraded only upon joint request of the local union, (3) be raised to journeymen by the local union only upon completion of the ITU Courses on Lessons in Printing, including the ITU Lessons in Unionism (except apprentice mailers and machinists who are required only to take the ITU Lessons in Unionism), and (4) secure local union permission to transfer from one employer to another. (General Laws, Article I).

who would be required to demonstrate his competency before being eligible for employment. There can be no doubt that the competency clauses require this different treatment nor that the difference in treatment of the two applicants results solely from the fact that one possesses an ITU card and the other does not.

Respondents have attempted to defend this clause on the ground that union members customarily serve apprenticeships and take examinations to receive a journeyman's card. But this contention does not bear close scrutiny. Under this clause a former ITU member expelled from the union for non-payment of dues or other reasons could not automatically obtain employment but would be required to pass a competency test, just as any other non-member of the ITU regardless of the assumption of competency which he would enjoy if he still held an ITU card. Plainly, the criteria for distinction is not competency but the possession of an ITU card. Moreover, the mere fact that an ITU member took an examination in one city twenty-five years ago is no evidence that he could qualify today in the examination given by the Joint Examining Board in a different city where he may seek employment. Yet, under the terms of this clause, no ITU member would be subject to such an examination.

2. The Normal Account Clause—Struck Work

A new device for nullifying the effect of Section 8(b)(4)(A), (B) and (C), and thus achieving the objectives of the struck work clause, appears in the post-injunction proposals. This clause reads as follows:

> "It is the purpose and intent of the employer to continue cooperative mutual relations with the union. It will be the purpose of the employer to maintain all prior practices in the operation of its composing rooms to the fullest extent permitted by the law, and to provide the maximum possible union security. The employer will not undertake any activity which will in any sense undermine or jeopardize the Union's strength or security or the wellbeing of its members. *It is the intent of the employer to limit composing room work to jobs obtained on a normal account basis.* It is agreed periodically and on specific request to review procedures and developments in the industry in the light of the above pledge and undertaking. It is understood

and agreed moreover that if any provision of the previous contract, excluded from this contract solely because of the restrictions of the law, is determined either by legislative enactment or by the decision of the court of highest recourse to be legal or permissible, then the parties shall immediately enter into discussions with a view to the restoration of such clause." (Emphasis supplied.)

Both documents show on their face that in the contemplation of respondent ITU this was the equivalent of a struck work clause. In the "Instructions and Advice" the text of this language was introduced by the phrase, "the struck work clause that we have heretofore recommended is not prohibited by the decree". Additionally, in recent negotiations the Printers League Section of the New York Employing Printers Association has agreed to the following proposal to meet the problem of struck work (Bd. Ex. 83). In the form entitled "Contract Provisions Which May be Proposed," etc. (Bd. Ex. 85) this clause is captioned "Statement of Intent" followed by this parenthetical language:

"If followed in good faith the matter of struck work may be solved by the following clause."

In the event that publishers would not accept that, this form then goes on with:

"Alternate proposal of struck work: The party of the first part agrees not to require its employees to perform composition or other work executed or to be further worked on, wholly or in part, by employees working in plants declared unfair by the union."

It requires no argument to demonstrate that the "alternate proposal" is subject to the same objections under the Act which attached to the struck work clause in the General Laws as well as the additional objections to the "sub-standard conditions" clause set forth by Trial Examiner Ringer in his Intermediate Report in the Graphic Arts case, supra.

The so-called "statement of intent" is simply a struck work clause in a new garb. The employers to whom it was to be proposed were publishers and commercial printers, the vast majority of whom had dealt collectively with the ITU for years. Consequently, by reason of their necessary observance of ITU laws, it is unlikely that any of them had among their "normal accounts" suppliers or customers who were not unionized or on the union's unfair list.

3. Respondents' Insistence on the Post-Injunction Proposals

When examined about these proposals Randolph testified that the clauses specified therein were not mandatory upon the locals but amounted to advice and suggestions. Yet he was unable to recall any contract approved by the ITU which had omitted the jurisdictional clause or the union foreman clause.

So far as the "normal account" clause was concerned, Randolph also referred to that as a recommendation (Id., Hu 25). He refused to explain what was meant by "normal account". He did say he regarded it as less satisfactory than the struck work clause in Form P-6A but in elaborating upon this aspect of the matter all he stated was that the "normal account" clause did not specifically mention an obligation to refrain from requiring "our people to work on sub-standard work".

Shortly after these new circulars had gone out to the locals a tentative agreement was reached between the New York Newspaper Publishers Association and Typographical Union Local No. 6. Under the normal procedure of the union the draft contract was then to be submitted to the membership for ratification before being forwarded to Indianapolis.

The intervention of the ITU Executive Council at this point sheds a revealing light upon Randolph's credibility in asserting that clauses like the jurisdiction, struck work (normal account) and the competency (hiring) clauses were mere recommendations or suggestions by the International. Because there were deviations from these clauses, in the draft contract the respondents who comprised the ITU Executive Council sent a telegram to Laurence H. Victory, President of the New York local, forbidding him to submit the contract to the membership (Bd. Ex. 88). In a subsequent letter dated April 19, 1948, the union was instructed that among the alterations which should be made in the contract were inclusion of the standard picket line clause (supra) and incorporation into the body of the contract a declaration of intent agreeing, inter alia, to employ only union members as foremen and "not to provoke disputes with respect to union jurisdiction, union security, and the union's position on the handling of struck work." The local was also told that the jurisdictional clause in the contract was

inadequate "in view of the large amount of varitype equipment the New York publishers have installed" and therefore the jurisdictional clause should specifically mention the operation of these machines. The legality of this demand may be assessed in the light of the fact that on some New York newspapers the operators of varityping machines are represented by another union (Tr. 3744, 3755). See Albert Love Enterprises, d/b/a Foote & Davies, Supra. Moreover, the ITU Executive Council took exception to "two highly dangerous impracticable and inequitable provisions". One of these provisions, designed to eliminate any illegal discrimination in favor of the union, gave preference in employment to persons who previously worked as compositors or type-setters in composing rooms in Greater New York. The Council stated that this "would open up newspaper composing rooms to all those who have worked in Greater New York, union or non-union, giving such applicants preference over members from outside New York. This provision must be eliminated." Of course, it is obvious that the clause contemplated would also have established a priority over New York members from outside New York but the ITU apparently felt that another clause which the New York local was told to insert would minimize the probability of non-union applicants being able to secure a job. This particular clause was to be substituted for one which provided that where a foreman had a doubt as to the competency of an applicant he could refer him for examination to "qualified and impartial examiners named by the New York City Board of Education." The objection to this rule was that there was no basis for the assumption that these examiners would be members of the union. Hence the local was instructed to redraft the rule to read as follows:

> "Journeymen concerning whose competency the foreman has no reason to doubt or journeymen who have registered for employment after having their competency tested and certified by the Joint Examining Board under procedures established by the School for Printers' Apprentices of New York City. Foremen may not exclude as candidates for employment any individuals who establish competency."

While the letter hints that the reason that the ITU preferred the New York School for Printers' Apprentices over examiners appointed by the Board of Education, any doubt that the real motive of the ITU was to secure

an examination system loaded in favor of the union was dispelled by Randolph's testimony. Under cross-examination by Board counsel he admitted that the school in question had an ITU member as an instructor. Although he said his information about the school was meager it was recalled to him that in Baltimore he testified that the school was operated under the supervision of a member of Local No. 6 with the approval of the Bureau of Education of the ITU.

In instructing Local No. 6 to make these changes in the draft contract, the Executive Council made no attempt to indicate that it was merely making recommendations. The letter badly states:

> "Wherever the word 'should' has been used in reference to any change suggested it is not used in a permissive sense as to the subject covered. The words we have used will be approved. Any deviation therefrom must be approved by the Executive Council before being submitted to the union."

Even assuming that the contract proposals in evidence conformed to the requirements of the Act and established that the ITU was permitting its subordinate locals to bargain in good faith, such evidence would hardly constitute a defense in view of the long continued course of law violation by the ITU and its subordinate locals. It sought for many months to impose upon the employers in all the cities involved in this case either Conditions of Employment or Form P-6A. It is true that there are decisions of the Board which hold that an initial reluctance of an employer to bargain collectively can be cured by subsequent good faith in bargaining negotiations. In those cases however the about-face of the recalcitrant party occurred early in the negotiations.

In the present case, however, the union's change of course did not occur until five months after the termination notices were served. During the 60-day bargaining period prescribed by Section 8(d), which typically commenced during the fall months of 1947, the ITU did not permit any of the Locals to bargain, As a result there were strikes and slowdowns in numerous cities and threats of strike action in others. It was not until after April 1st that any of the locals were authorized to make the contract proposals here under discussion. Surely

a belated repentance after five months of illegal conduct is not a ground which would justify the Board in refusing to issue a remedial order. There is an abundance of authority to this effect, Augusta Broadcasting Co., 58 NLRB 1493, Burke Machine Tool Co., 36 NLRB 1329; Delaware-New Jersey Ferry Co., 30 NLRB 820.

That there has been no real change of heart by the leaders of the ITU is clearly indicated by the text of Postcard Bulletin No. 120 mailed out after the decree. In this bulletin the locals were told:

> "The NLRB General Counsel, plus the employers who gladly follow him, tried to destroy our union by unlimited, unrestricted hiring of non-union help; by unlimited and unrestricted handling of struck work; by unlimited and unrestricted tearing down our jurisdiction; by eliminating reproduction and by hiring non-union foremen. *We have successfully fought off such destructive efforts and will keep fighting to the fullest extent under the law.*" (Emphasis supplied.)
>
> "The NLRB General Counsel dropped jurisdiction, struck work, reproduction and foremen as matters to be covered by the injunction.
>
> "When employers became willing to negotiate such security for us as the law permitted, the Executive Council approved (pending the life of the temporary injunction) a contract for one year. The injunction is limited and temporary. The NLRB decision is yet to come."

In the light of this history and affirmative evidence in the closing days of the hearing to show that the locals are not free to deviate from the standard contract clauses, any inference that the new contract proposals are mere advice as distinguished from instructions and directions is not supported by the record. In short, the evidence respecting a new course of action after the decree merely represents another change of strategy by the union to gain its familiar objectives.

CONCLUSION

For all the reasons set forth above and in our Brief and in the light of the contempt decree issued on October 13, 1948 by Judge Luther Swygert in Evans et al. v. ITU, U.S.D.C. So. D. Ind., Indianapolis Div. Civil No. 1587, we urge the Board to sustain the exceptions of the General Counsel to the trial examiner's Intermediate Reports in these cases and in all other respects to sustain the findings and conclusions of the trial examiner.

Respectfully submitted,
Gerard D. Reilly
Charles Edward Rhetts
Attorneys for
The Inland Daily Press Association

October 15, 1948

UNITED STATES OF AMERICA
Before the
National Labor Relations Board

In the Matter of International Typographical Union, and its agents Woodruff Randolph, Larry Taylor, Elmer Brown, and Don Hurd, and American Newspaper Publishers Association	Case No. 9-CB-5

RESPONDENTS' EXCEPTIONS TO TRIAL EXAMINER'S INTERMEDIATE REPORT

The respondents, the International Typographical Union and its agents, Woodruff Randolph, Larry Taylor, Elmer Brown and Don Hurd, hereby take the following exceptions to the Intermediate Report of Trial Examiner Arthur Leff, dated August 6, 1948:

1. To those Findings of Fact, labeled Conclusions, on pages 45-51, which indicate that the respondents have violated sections 8 (b) (2), 8 (b) (1) (A) and 8 (b) (1) (B) of the Labor-Management Relations Act, said Findings of Act being unsupported by competent evidence and contrary to law.

2. To the Conclusions of Law numbered 4, 5, 6 and 7, said Conclusions being premised on erroneous Findings of Fact and contrary to law.

3. To the Recommendations that the respondents cease and desist from the described activities and that they take the prescribed affirmative action.

Wherefore the Board is respectfully requested to set aside the Trial Examiner's findings, conclusions and recommendations specified herein and to substitute findings and conclusions which conform with the facts in the record and with the provisions of the Act.

Respectfully submitted,
Van Arkel and Kaiser
1830 Jefferson Place, N. W.
Washington 6, D. C.

October 15, 1948

CERTIFICATE OF SERVICE

City of Washington }
District of Columbia } ss.

I, Eugene Gressman, a member of the firm of Van Arkel and Kaiser, hereby certify that a copy of the Respondents' Exceptions to Trial Examiner's Intermediate Report in the above entitled case has been duly served on all of the parties involved by mailing same to them on October 15, 1948.

UNITED STATES OF AMERICA
Before the National Labor Relations Board

In the Matter of International Typographical Union, and its agents Woodruff Randolph, Larry Taylor, Elmer Brown, and Don Hurd and American Newspaper Publishers Association	Case No. 9-CB-5

DECISION and ORDER

On August 8, 1948, Trial Examiner Arthur Leff issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices, and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that the Respondents had not engaged in certain other alleged unfair labor practices, and recommended dismissal of these allegations of the complaint. Thereafter, the Respondents, complainant, and the General Counsel, and Intervenors[1] filed exceptions to the Intermediate Report and briefs in support thereof.

All parties participated in oral argument before the Board on May 24, 1949.

The Board has reviewed the rulings of the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the briefs and exceptions, the contentions advanced at oral argument, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions, explications, and modifications.

[1] Southern Newspaper Publishers Association and Inland Daily Press Association.

1. The violation of Section 8 (b) (2) of the Act.

A

The Trial Examiner found that the Respondent violated Section 8 (b) (2) of the Act on and after August 23, 1947, by applying coercive pressures on employers in the newspaper industry in order to compel them to conduct labor relations pursuant to a "bargaining" scheme designed primarily to effect the maintenance of "closed-shop" conditions. His affirmative findings in this respect are premised upon his interpretation of what the contemplated or actual operation of two successive facets of the "bargaining" scheme would be. These two are now rather widely known as the "Conditions of Employment" or "no-contract" strategy and the "P-6A" or "60-day contract" strategy, respectively. The Respondents have challenged both the factual and legal sufficiency of these findings as a predicate to sustaining alleged violations of Section 8 (b) (2) of the Act. For the reasons stated below we find no merit to these exceptions.

Summarizing the pertinent facts, more fully set forth in the Intermediate Report, it appears that on or about August 21, 1947, the Respondent I. T. U.[2] and the subordinate I. T. U. local unions, meeting in convention, unanimously adopted and agreed to follow a uniform bargaining policy,[3] avowedly designed to avoid the impact of those provisions of the amended Act which, inter alia, outlawed the "closed-shop" employment practices then in effect in shops organized and represented by the I. T. U. and/or its subordinate Locals. The "Policy" so adopted, and widely publicized by the Respondents, contemplated the use during future negotiations, of a "bargaining strategy" calculated to compel employers to maintain, non-contractually and under threat of strike, employment conditions "satisfactory" to the Respondents and to the members of Local unions immediately engaged in the negotiations. To this end, the Respondents formulated and the convention adopted, a "Conditions of Employment" form which both: (1) set forth the

[2] Respondent International Typographical Union is referred to herein as the "I. T. U.".

[3] Identified at the convention and throughout these proceedings as the "I. T. U. 1947 Collective Bargaining Policy." This is sometimes referred to in our decision herein as the "Policy". It was adopted on the very eve of the effective date of the amendments of the Act, which was August 22, 1947.

"only" conditions under which I. T. U. members would work—one such condition being that they would not work with non-union men; and (2) embodied the threat that the failure of the employers to provide the stated conditions would result in the declaration by the unions, pursuant to procedures in I. T. U. "laws," of a "lockout".

As found by the Trial Examiner, the negotiations taking place after August 22, 1947, throughout the country were marked, on the union side, by the employment of the "Conditions" form, the adamant refusal to the unions to enter into any contract, written or oral with respect to any employment condition, and by the publication by the Local unions and the Respondents through the "Conditions" form and otherwise, of the threat that union members would walk out if non-union men were employed. It was further publicized by the Local unions and the Respondents that the absence of any contractual relation was calculated to and was deliberately insisted upon so as to enable the Respondent I. T. U. and Local unions to carry out the threat of strike,[4] without incurring liability under the Act. Thus, in the view of the unions, the absence of a contract would provide them with such freedom in the formulation of a strike issue, as would enable them, in the event the Employers departed from "closed-shop" practices in the day-to-day administration of labor relations, to cloak the threatened strike with a legitimate economic label. Unquestionably, the use of the "Conditions of Employment" strategy in the manner described above, constituted conduct prescribed by Section 8 (b) (2) of the Act.[5]

As is further set forth in the Intermediate Report, the "Conditions" strategy was slightly modified by the Re-

[4] We agree with the Trial Examiner's implicit holding that the announcement by a union to employers that its membership would not work under certain conditions, coupled with a union's careful maneuvering of negotiations so as to permit a ready, and coincidental exercise of "the right not to work" having union sanction, constitutes a union threat to strike for the maintenance of the specified conditions. Cf. **Matter of United Mine Workers of America, et al.**, 83 N. L. R. B., No. 135.

[5] Like the Trial Examiner, we find no merit to the Respondent's contention that the violation of Section 8 (b) (2) of the Act cannot be established absent a showing that particular employees were the actual or intended objects of a discriminatory scheme. See **Matter of National Maritime Union of America, et al. (The Texas Co.)**, 78 N. L. R. B. 971, Enforced 24 L.R.R.M. 2468 (C. A. 2); **Matter of American Radio Association et al.**, 78 N.L.R.B., No. 151; **Matter of United Mine Workers, et al.**, 83 N.L.R.B., No. 135.

spondents[6] on about October 1947, following the institution of Board proceedings by employers (not involved immediately in the instant cases) complaining of the illegality of the use of such tactics by the I. T. U. and its Local union. The modified strategy contemplated the unions' submission to employers of an alternate proposal, known as "P-6A", embodying the unions' offer to enter into a bilateral agreement cancellable at any time upon 60 days' notice. This alternate proposal, frankly designed by the Respondents to make the "Conditions" form "more desirable to the employers," was in fact utilized on a Nation-wide basis in the negotiations here in issue. Its use represented the sole departure, during the period here material, from the "no-contract" strategy above described.

Analysis of the purport and effect of the "P-6A" proposal in the light of the entire record, convinces us that, as the Examiner so succinctly finds, "the only difference between 'P-6A' and no contract at all was that, under 'P-6A', reprisal action against an employer for hiring non-union employees might be postponed for 60 days." The record is replete with evidence, substantially outlined in the Intermediate Report, that the "P-6A" strategy was but a tactical maneuver, calculated, at the very least, to compel, as in the case of the "Conditions" strategy, the non-contractual employer maintenance of "closed-shop" conditions by the use of a continuing threat to strike. Indeed, as the record shows, the Respondents plainly and contemporaneously advertised the 60-day clause in "P-6A" as a coercive pressure element designed to put "the employer in a position where he is likely not to have union men working for him [at the end of 60 days] if he hires non-union men. * * *"

We accordingly conclude, as did the Trial Examiner, that the intended and actual effect[7] of the application of the "Collective Bargaining Policy" was to compel the employers discriminatorily to exclude non-union men from employment in violation of Section 8 (a) (3) of the Act, and that,

[6] The Respondents were empowered, under the terms of the "Policy" to make such modifications and to enforce Local union and membership adherence thereto.

[7] In those instances where the employer acquiesced in the "Policy" in operating under the "Conditions of Employment" form or by executing "P-6A" form contracts.

by causing and participating in the application of the "Policy" against employers, as fully described in the Intermediate Report, the Respondents violated Section 8 (b) (2) of the Act.

B.

The Trial Examiner also found that the Respondents did not violate Section 8 (b) (2) by demanding the inclusion, in the "P-6A" contract framework, of certain "miscellaneous" union-security clauses covering, inter alia, the work jurisdiction of the union, the competency of composing room employees, and the operation of I. T. U. and local union "laws" during the contract term. To these findings, the General Counsel and the employer parties to these proceedings take exception. For the reasons hereafter stated, we neither pass upon the merits of these exceptions, nor adopt the Trial Examiner's findings in this respect.

We have heretofore found, as did the Trial Examiner, that, like the "Conditions of Employment" strategy, the "P-6A" phase of the I.T.U. "bargaining strategy" was designed to compel the employers to maintain "closed-shop" conditions non-contractually under penalty of strike action, and that the 60-day cancellation feature of "P-6A" constituted the coercive element in that agreement. Indeed, as found in the Chicago Publishers case,[8] the 60-day cancellation clause of "P-6A" alone, and without regard to the substantive provision of the contract, renders that contract an invalid bargaining proposal within the meaning of the Act. In these circumstances, and for reasons set forth in our discussion of the 8 (b) (3) aspects of the Chicago Publishers' case,[9] we find it unnecessary to pass upon the legality of the "miscellaneous" clauses of "P-6A."[10]

2. The alleged violations of Section 8 (b) (1) (A)

The complaint, as construed in the course of litigation, alleged the following conduct by the Respondents to be

[8] Matter of Chicago Newspaper Publishers' Association, et al, 86 N. L. R. B., No. 116, referred to herein as the Chicago Publishers' case.

[9] Matter of Chicago Newspaper Publishers' Association, et al, 86 N. L. R. B., No. 116.

[10] Member Reynolds does not join in the majority decision not to pass upon the legality of these clauses, for the reasons stated in his separate opinion attached to the Chicago Publishers' case.

violative of Section 8 (b) (1) (A): (1) all of the conduct relied upon as a basis for the 8 (b) (2) allegations of the complaint; (2) refusing, or causing the subordinate I.T.U. Locals to refuse to bargain collectively; (3) using against Local unions and their members the threat of summary expulsion, when such Local unions failed to follow I.T.U.-promulgated edicts requiring Local union conduct inconsistent with the latter's statutory obligations; (4) demanding or causing local unions to demand that employers accept certain (specified) contractual terms[11] which, if adopted and carried out, would constitute, on the employer's part, a violation of Section 8 (a) (1) and a negation of the effect of other provisions of the Act; and (5) causing or supporting "slow-downs" in production engaged in by members of subordinate local unions in an effort to force employers to comply with the terms of the "Collective Bargaining Policy." For various reasons, the Trial Examiner, with the one exception noted below, dismissed these allegations, which are now before us on exceptions by the parties.

The Respondents, although denying generally the commission of the conduct complained of and the sufficiency of the evidence adduced to prove the commission, have challenged all of these allegations on grounds of legal sufficiency. It is the Respondents' legal position[12] that, aside from any issue of proof, no part of the complaint states a "cause of action" under Section 8 (b) (1) (A). Various aspects of these legal problems have been presented to us on numerous occasions since our interlocutory ruling denying, in effect, Respondents' motion for summary dismissal. We here summarize those cases to clarify the

[11] Some of the contract terms objected to are set forth in the Trial Examiner's Report.

[12] The legal sufficiency of these allegations was first challenged by the Respondents at the outset of the hearing under a motion for summary dismissal, which the Trial Examiner granted in part, and denied in part. Upon the General Counsel's appeal from the Trial Examiner's grant of the Respondents' motion to dismiss certain allegations, we then reinstated allegations thus ordered struck from the complaint. At the same time, we denied the Respondents' motion for leave to appeal so much of the Trial Examiner's ruling on the motion to dismiss as was adverse to the Respondents, indicating that our refusal to entertain the Respondents' appeal was not to be taken as a ruling on the merits of the issues of law raised by the motion to dismiss. We further indicated at that time that we would consider these issues when the entire case was before us for decision.

concepts there considered and to indicate their applicability here.

In the National Maritime Union case,[13] the first of the series, we decided on the basis of the legislative history there cited, that, although Congress used the generic term "restraint and coercion" on this section, the legislative scheme envisaged a narrow construction of the terms. We held its proscriptions were limited to situations involving actual or threatened economic reprisals and physical violence by unions or their agents against specific individuals or groups of individuals in an effort to compel them to join a union or to cooperate in a union's strike activities.[14]

Application of the foregoing principle, and its refinement in subsequent cases[15] require the conclusion that, with one possible exception, none of the activities encompassed by the complaint constitute unfair labor practices within the meaning of Section 8 (b) (1) (A). The exception is the claim that the Respondents coerced segments of the membership to cooperate in the successful operation of the unlawful "Collective Bargaining Policy"

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[13] **Matter of National Maritime Union, et al. (The Texas Co.),** (1948) 78 N. L. R. B. 871, enforced ..... F. 2d ....., 24 L.R.R.M. 2468 (CA 2).

[14] Our decisions in **Matter of Sunset Line and Twine Co.,** 79 N. L. R. B. 1487; **Matter of Seamprufe Mfg. Co., Inc.,** 82 N. L. R. B., No. 106; **Matter of Smith Cabinet Co.,** 81 N. L. R. B., No. 138; **Matter of Perry-Norvell Mfg. Co.,** 80 N. L. R. B., No. 47; and **Matter of H. Milton Newman, et al.,** 85 N. L. R. B., No. 132; reflect the type of conduct we deem proscribed by Section 8 (b) (1) (A).

[15] In **National Maritime Union of America, et al., (The Texas Co.),** 78 N.L.R.B. 971, we held that a union or its agent does not violate 8 (b) (1) (A) by unlawfully refusing to bargain, or by attempting through strike action, to obtain from an employer an unlawful "closed-shop" agreement. Similar holdings were made in **Matter of Amalgamated Meat Cutters (The Great Atlantic & Pacific Company),** 81 N.L.R.B., No. 164; **Matter of American Radio Association, et al.,** 82 N.L.R.B., No. 151; **Matter of National Maritime Union, et al.,** 82 N.L.R.B., No. 152. In **Matter of United Mine Workers of America, et al.,** 83 N.L.R.B., No. 135, we ruled that no "restraint and coercion" within the meaning of 8 (b) (1) (A) can be found even where a union has succeeded in obtaining an employer's agreement to maintain "closed-shop" conditions. In **Matter of Perry Norvell, et al.,** 80 N.L.R.B., No. 47 we decided that, although violent conduct or the application of forcible restraints against particular individuals during the course of a strike are proscribed by 8 (b) (1) (A), the collateral "restraints" and "coercions" of a strike having an unlawful objective are not encompassed within Section 8 (b) (1) (A). In **Matter of Sealright Pacific, et al.,** 82 N.L.R.B., No. 36, we squarely rejected contentions that the collateral "restraints" and "coercions" affected by secondary picketing violative of 8 (b) (4) (A) were per se within the scope of 8 (b) (1) (A). In **Matter of Watson's Specialty Store, et al.,** we refused to find that conduct violative of 8 (b) (4) (A) also automatically constituted a violation of 8 (b) (1) (A).

by threatening to expel recalcitrants from membership under provisions of intraunion rules granting the Respondents summary expulsion power. It is argued by the General Counsel and the Charging Parties that, because expulsion would deprive the expelled members of certain economic perquisites of the union-membership relation, findings of "coercion" in the statutory sense could appropriately be premised on the threat. We agree with the Trial Examiner, however, that that argument is squarely at odds with the unambiguous language of the proviso to Section 8 (b) (1) (A)[16] and the legislative scheme as a whole, and must therefore be rejected. In our view, by including this proviso Congress unmistakably intended to, and did, remove the application of a union's membership rules to its members from the proscriptions of Section 8 (b) (1) (A), irrespective of any ulterior reasons motivating the union's application of such rules or the direct effect thereof on particular employees.

As the Respondents' legal attacks on the sufficiency of the complaint are consistent with these views, we find them meritorious. Therefore we shall dismiss all the 8 (b) (1) (A) allegations, without passing upon the sufficiency of proof. Accordingly, we hereby reverse the Trial Examiner's finding that 8 (b) (1) (A) violations occurred in those instances where the union had been successful in causing the employers to continue "closed-shop" hiring practices. To the extent that the Trial Examiner's dismissal of the remaining 8 (b) (1) (A) allegations is predicated upon reasons in harmony with the views expressed above, we hereby adopt them.[17]

3. The violation of Section 8 (b) (1) (B) of the Act

The Trial Examiner found that by engaging in coercive conduct designed to compel employers to continue hiring only union foremen, the Respondents violated 8 (b) (1) (B). The Respondents' exceptions to these findings present the following broad questions: (1) whether in the

[16] This proviso states that Section 8 (b) (1) (A) shall not be applied so as to "impair the right of a labor organization to prescribe its own rules for the acquisition or retention of membership." It is unnecessary to do more than mention that the guarantee of a right to "prescribe" rules extends to the enforcement of such rules as well.

[17] In view of our disposition of the case, we expressly adopt Section III, E, 4 (e) of the Intermediate Report, but do not pass upon or adopt Section III, E, 4 (a), 4 (c), and 4 (f) thereof.

projected union-employer arrangement the Respondents here sought to achieve, composing room foremen are management representatives "for the purposes of * * * the adjustment of grievances" within the meaning of Section 8 (b) (1) (B); and (2) whether the Respondents' bargaining position with respect to foremen constituted "restraint and coercion" of the employers.

The record clearly shows, as found by the Trial Examiner, that under the Respondents' Collective Bargaining Policy" the employers were required to continue to hire only union foremen and to delegate to these foremen certain managerial powers, including the power of adjusting grievances. The precise scope and nature of these powers is spelled out in the provisions of the ITU "Laws" which were incorporated both in the "Conditions of Employment" and "P-6A" forms.[18] As a comprehensive reading of these "Laws" establishes, the breadth of the managerial powers so vested in foremen is such that the foreman constitutes an arbiter of all matters affecting the employment of individual employees and any and all grievances pertaining to their work, subject only to appeal to the union itself or to whatever joint union-employer agency there be established by collective contract for the purpose of resolving disputes about the interpretation of the express contract provisions.[19] Thus, inter alia, the "Laws" specifically provide that the foreman is the "only recognized authority in the composing room,"[20] and that all grievances based upon claimed contract violations must in the first instance be submitted to him for adjustment.[21] The "Laws" further provide that the foreman have the exclusive power to hire and discharge, and that a "member who has been discharged

[18] Both the "Conditions" and "P-6A" forms require employer compliance with the specific provisions of the ITU "Laws" in all situations not otherwise covered by the express terms of the forms. In addition, the "Conditions" form expressly provides that the composing room be under the "direction and supervision of a foreman who is a member (of the ITU) and who, as foreman, shall have complete control over the hiring and discharging of (ITU) members.

[19] The "Conditions" form did not provide for any such joint agency. The "P-6A" contract contemplated the establishment of an appellate body having the power to adjudicate disputes "as to the construction to be placed upon any clause of the agreement * * * or alleged violations thereof which cannot be settled otherwise."

[20] Article V, Section 1 of the 1947 General Laws of the ITU.

[21] Article III, Section 6 of the 1947 ITU General Laws.

for any reason other than to reduce the force may be reinstated at the option of the foreman, or by proceeding to appeal to the subordinate union in the manner provided by the subordinate union laws."[22] Under these circumstances, we find as did the Trial Examiner, that the foremen here involved constitute employer "representatives for the purposes * * * of the adjustment of grievances" within the meaning of Section 8 (b) (1) (B) and that, under the legislative plan projected in this section, the Respondents could not, by applying coercive pressure, attempt to compel the employers to limit the selection of this type of foreman to a class composed only of union members.[23]

We also agree with the Trial Examiner that the threat of strike action, which was an integral part of the above-described "Policy" scheme, was utilized by the Respondents to implement their bargaining position on foremen in the same manner as it was utilized to implement their bargaining position on rank-and-file employees. That the employers did not affirmatively resist the foreman demands is not material to the issue of whether the Respondents resorted to unlawful conduct. As found by the Trial Examiner, in accord within innumerable precedents,[24] the existence of coercion within the meaning of the law does not depend upon a determination of the actual effect of such coercion in a particular case. It is enough, as here, that the Respondents threatened strike action—a coercive tactic[25] calculated and designed to force the Employers to captiulate to the foreman demands.

We accordingly find,[26] as did the Trial Examiner, that

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[22] Article V, Section 7 of the 1947 ITU General Laws.

[23] That the statutory scheme extended the protection of 8 (b) (1) (B) to the right of employers to select foremen having the type of duties above detailed, is indicated not only by the absence of any exemptive language in Section 8 (b) (1) (B) but also by the legislative history of this provision. See e. g. Senate Report No. 105 on S. 1126, 80th Cong. 1st Sess., at p. 21; the remarks of Senator Ellender at 93 Cong. Rec., p. 4266; and the remarks of Senator Taft at 93 Cong. Rec., pp. 3953-3954.

[24] See cases cited by the Trial Examiner at p. 51 the Intermediate Report.

[25] See Matter of American Radio Corporation, et al, 81 N. L. R. B., No. 151.

[26] Member Murdock does not join in the finding of the Section 8 (b) (1) (B) violation. In the context of this case, he does not feel that the foreman demands of the Respondents should be treated as anything more than a facet of the attempt to achieve closed-shop conditions which has been found violative of Section 8 (b) (2) of the Act.

by the conduct described above, the Respondents restrained and coerced the employers in the selection of their representative for the purposes of the adjustment of grievances, thereby violating Section 8 (b) (1) (B) of the Act. [27]

4. The alleged violation of Section 8 (b) (6) of the Act.

We agree with the Trial Examiner's conclusion that the Respondent's demands for maintenance of reproduction practices in the industry cannot be reached under Section 8 (b) (6) of the Act. It is not our function, of course, to pass upon the social or economic desirability of the practices.

It is clear from the legislative history set forth in the Intermediate Report that Section 8 (b) (6) did not purport to reach all "featherbedding" practices. The scope of the section as passed was limited to but one of the several types of featherbedding which had been encompassed in the earlier House version of the Act—exaction of payment for services "not performed or not to be performed." Conceding, as the proponents of the complaint urge, that the reproduction practice requires the employer to pay employees for time—equivalent to approximately 5 percent of their total work time—during which they perform no actual work in the statutory sense, it does not follow that such payment constitutes an "exaction," within the meaning of the section. Thus, Senator Taft in effect stated, as noted by the Trial Examiner, that it would not be "in the nature of exaction" to compel employers to give employees paid rest or vacation periods because they are paid for the work they do" and the payment for rest periods, during which no work is done, is "for valuable consideration incident to the employment itself." It seems to us that Senator Taft's view as to what is not an exaction incorporates by analogy, the well-established reproduction practice in the printing industry. Thus, in the case at bar, as fully described in

[27] Our decision is in no way to be interpreted to mean that we would hold on other facts that Section 8 (b) (1) (B) prohibits employees from collective action designed to induce their employer to remove specific supervisory employees having power to adjust grievances. It is sufficient to point out, for purposes of this case, that the Respondents' efforts were aimed at arrogating to itself, as a matter of policy and practice, general control over the selection of such supervisory employees.

the Intermediate Report, all employees engage in production work for the employer's benefit, but as an incident to such employment they demand and receive payment for certain non-production time.

In our opinion, the instant situation is unlike the only concrete examples mentioned in the legislative history as constituting an exaction. As set forth in the Intermediate Report, one such example involved a demand that the employer "hire one orchestra and then pay for another stand-by orchestra which does no work at all" the other example involved a union demand that the employer must have 10 musicians, and if you insist there is room for only 6, you must pay for the other 4 anyway." The common circumstance in both examples is the fact that the stand-by or extra employees furnish no consideration whatsoever for their employment, and their entire compensation represents payment for non-productive time; in fact, their employment relationship is created and maintained solely for the purpose of forcing payment of wages for services not to be performed. These examples cannot be equated with the instant situation, where the employment is for the primary purpose of doing production work—representing 95 percent of the employees' time—and the consideration for such employment includes payment, as in the case of a paid rest period, for a relatively short period of non-productive time. We are satisfied that payment for reproduction work can represent an integral part of the wage structure of workers already standing in a proximate employer-employee relationship, not unlike a guaranteed weekly or annual wage arrangement, which is generally recognized as a legal demand, although it may and often does in any given situation, involve payment for non-productive time.

Under all the circumstances, especially the clear congressional intent to limit and restrict the application of this section, we are not convinced that the long-established and well-known reproduction practice falls within the proscription of 8 (b) (6).[28] We shall accordingly dismiss that allegation of the complaint.

[28] Significantly, reproduction practices in the printing industry, although well known, were not referred to in the debates as one of the industrial practices to be outlawed by this section.

5. Post-Injunction Conduct.

Our consideration of the record so far has been limited to conduct occurring before March 27, 1948.[29] As detailed in the Intermediate Report, the General Counsel also adduced evidence in support of the complaint as to matters occurring after that date. At the hearing and before the Board the Respondents have opposed the Trial Examiner's admission of this evidence, contending that the date of the injunction was the proper "cut off" date for the receipt of evidence in support of the complaint.[30]

The Respondents' objection to this evidence is based in part upon its legitimate interest in having a speedy determination of issues in a case like this one, involving an outstanding injunction, and also upon the lack of materiality of the evidence with respect to any remedy which might otherwise be ordered in the case. The Respondents argue, and we agree, that even if the post-injunction conduct be found legal, it could in no event render moot any unfair labor practice committed prior thereto, because, apart from other considerations, conduct engaged in under an injunction is necessarily ambiguous, it being impossible to determine whether such conduct is voluntary or springs from the compulsion of the injunction. It is equally clear that even though this conduct were found unlawful, more specifically violative of Section 8 (b) (2),[31] such a finding could add nothing to the normal order which we shall otherwise issue to remedy the Respondents' earlier violation of the Act.

Under all the circumstances of the case, we find it unnecessary to consider this post-injunction conduct and

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[29] On March 27, 1948, in an ancillary proceeding to this case, the United States District Court for the Southern District of Indiana issued an injunction pursuant to Section 10 (j) of this Act, Evans v. ITU, 76 F. Supp. 88. The court found that there was a probability that Respondents herein had violated Section 8 (b) (1) and 8 (b) (2) and ordered the Respondents to cease and desist from certain specified conduct.

[30] In view of our prior disposition of the issues raised by the complaint, the evidence in question could have bearing only on Section 8 (b) (2).

[31] As fully set forth in the Intermediate Report, this post-injunction evidence concerned a so-called form contract having a year's duration and the New York negotiations with respect to this contract. For various reasons, the Trial Examiner found that this evidence did not establish a violation of the Act. The General Counsel and the charging parties have excepted to the Trial Examiner's substantive conclusions.

accordingly do not adopt or pass upon the Trial Examiner's findings thereon.

6. 8 (c) Considerations.

We find no merit in the Respondents' contention that Section 8 (c) and the proviso to Section 8 (b) (1) (A) render inadmissible in evidence certain intraunion publications, relied upon to some extent by the Trial Examiner. As set forth fully in the Intermediate Report, the record contains numerous documents published and circulated by the I.T.U. among its Locals and membership. These documents include official publications concerning the adoption of the collective bargaining Policy here in issue, and post-card bulletins and other statements interpreting, construing, and directing the enforcement of the established policy in a particular manner. All of the documents considered by us report the official position of the Respondents with respect to a collective bargaining Policy which they were empowered to interpret and enforce and which was actually followed and enforced in negotiations with employers.

On the basis of the legislative history of Section 8 (c),[32] we are entirely satisfied that these publications were not expressions of "views, argument or opinion" privileged by that section, but were in the nature of admissions, directions, instructions, or other verbal acts—and hence properly admissible in evidence. Nor are we persuaded by the Respondents' argument that these documents are inadmissible because of the proviso to Section 8 (b) (1) (A). Assuming arguendo that the proviso may be applicable to sections of the Act other than 8 (b) (1) (A),[33] there is certainly no legislative warrant for torturing the language of the proviso so as to preclude the Board from considering all relevant evidence in ascertaining the nature and purpose of a union's established collective bargaining Policy or whether that Policy's application to employers violated unfair labor practice sections of the Act.

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[32] See Matter of Amalgamated Meat Cutters (The Great Atlantic and Pacific Tea Co. Case), 81 N.L.R.B., No. 164.

[33] See supra, Section 2, where we relied upon the proviso in determining the intended scope of Section 8 (b) (1) (A).

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the Labor Management Relations Act, the National Labor Relations Board hereby orders that:

1. Respondent International Typographical Union, and its officers, agents, and representatives, and

2. Woodruff Randolph, Larry Taylor, Elmer Brown, and Don Hurd, their agents and successors, shall:

(a) Cease and desist from:

(1) Threatening to take strike action, or directing, instigating, or encouraging employees to engage in or to threaten to engage in, strike action, or approving or ratifying strike action taken by employees, for the purpose of requiring employers either non-contractually or as a matter of contractual obligation to violate Section 8 (a) (3), by discriminating with respect to the employment or conditions of employment of any employee.

(2) In any other mannner causing or attempting to cause employers to discriminate against employees in violation of Section 8 (a) (3) of the Act.

(3) In any manner restraining or coercing employers in the selection of their representatives for the purposes of collective bargaining or the adjustment of grievances.

(b) Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(1) Post immediately in conspicuous places at all halls and offices of the Respondent I.T.U. and its Locals, and all other places where notices to members are customarily posted, and publish in the Typographical Journal, official paper of the Respondent International Typographical Union, a copy of the notice attached hereto and marked Appendix A. These notices shall be signed by a duly authorized officer of the Respondent, International Typographical Union and by the individual Respondents herein or their successors in office, and shall remain so posted and maintained for a period of 60 days.

(2) Notify the Regional Director for the Ninth Region in writing, within ten (10) days from the date of this Order, what steps the Respondents have taken to comply herewith.

It Is Further Ordered that the complaint be, and it hereby is, dismissed insofar as it alleges that the Re-

spondents coerced and restrained employees in violation of Section 8 (b) (1) (A) of the Act; that they caused or attempted to cause employers to pay for services not performed or not to be performed in violation of Section 8 (b) (6) of the Act.

Signed at Washington, D. C., this 28th day of October 1949.

Paul M. Herzog
Chairman
John M. Houston
Member
James J. Reynolds, Jr.
Member
Abe Murdock
Member

(Seal)

NATIONAL LABOR RELATIONS BOARD

APPENDIX A

NOTICE
TO ALL OFFICERS, REPRESENTATIVES, AGENTS AND MEMBERS OF THE INTERNATIONAL TYPOGRAPHICAL UNION
PURSUANT TO
A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

We Will Not threaten to take strike action, or direct, instigate, or encourage employees to engage in or to threaten to engage in, strike action, or ratify strike action taken by employees, for the purpose of requiring employers either non-contractually or as a matter of contractual obligation to violate Section 8 (a) (3) of the Act by discriminating with respect to the employment or conditions of employment of any employee.

We Will Not in any other manner cause or attempt to cause employers to discriminate against employees in violation of Section 8 (a) (3) of the Act.

We Will Not in any manner restrain or coerce employers in the selection of their representatives for the purposes of collective bargaining or the adjustment of grievances.

INTERNATIONAL TYPOGRAPHICAL UNION

By

President

Elmer Brown — Woodruff Randolph

Don Hurd — Larry Taylor

UNITED STATES OF AMERICA
Before the National Labor Relations Board
Thirteenth Region

In the Matter of Chicago Typographical Union No. 16 and International Typographical Union and Chicago Newspaper Publishers Association on behalf of The Chicago Daily News Inc. Illinois Publishing and Printing Company The Journal of Commerce Publishing Company Sun and Times Co. Tribune Company	Case No. 13-CB-6

COMPLAINT

It having been charged by Chicago Newspaper Publishers Association, herein called the Association, on behalf of the following employers, The Chicago Daily News, Inc., Illinois Publishing and Printing Company, The Journal of Commerce Publishing Company, Sun and Times Co., and Tribune Company, herein called the companies, that Chicago Typographical Union No. 16 and International Typographical Union, herein called respondents, Chicago Typographical Union and I.T.U., respectively, have engaged in and are now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, herein called the Act, the General Counsel of the National Labor Relations Board, in behalf of the Board, by the Regional Director for the Thirteenth Region, designated by the National Labor Relations Board's Rules and Regulations, Series 5, hereby issues this Complaint and alleges the following:

I. The Association is and at all times herein referred to has been a voluntary association, having its principal office in the City of Chicago, Illinois, and existing for the purposes, among others, of bargaining collectively with labor organizations representing employees of its members.

The companies are and at all times herein referred to have been members of the Association and have designated and continue to designate the Association as their agent for the purpose of bargaining collectively with respondents and other labor organizations with respect to rates of pay, wages, hours of employment, and other conditions of employment of the companies' employees.

II. Each of the companies is and at all times herein referred to has been an Illinois corporation with its principal place of business in Chicago, Illinois, and engaged in the publishing of a daily newspaper in Chicago, Illinois.

III. Each of said companies in the course and conduct of its business causes and at all times herein referred to has continuously caused substantial quantities of news print, ink, and mats to be purchased and transported in interstate commerce from and through the several states of the United States other than the State of Illinois to its place of business in Chicago, Illinois, and receives and has continued to receive for publication in its newspaper substantial amounts of national advertising, national press service news, and national feature articles; each of said companies causes and at all times herein referred to has continuously caused substantial quantities of its published newspapers to be sold and transported in interstate commerce from its aforesaid place of business in and through the several states of the United States other than the State of Illinois.

IV. Respondents are labor organizations within the meaning of Section 2 (5) of the Act and admit to membership employees of the companies.

V. Respondent Chicago Typographical Union is and at all times herein referred to has been chartered by and a subordinate union of respondent I.T.U. and, as such, is required to and has adhered to and complied with all the provisions and requirements of the constitution, bylaws, general rules and policies of respondent I.T.U. and is required to be and has been guided and controlled by all policies, decisions and acts of respondent I.T.U.

VI. In order that the employees of the companies may have the full benefit of their right to self-organization and collective bargaining and otherwise to effectuate the policies of the Act, all employees of the companies' composing rooms performing work pertaining to printing, exclud-

ing all clerical employees and other employees and all supervisors having authority in the interest of the companies, or any of them, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees or responsibly to direct them or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment, constitute and at all times herein referred to constituted a unit appropriate, herein called unit, for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

VII. On and before August 23, 1947, all of the employees of the companies in the unit described in paragraph VI above designated respondents as their representatives for the purposes of collective bargaining with the companies with respect to rates of pay, wages, hours of employment and other conditions of employment. Respondents are, and at all times herein referred to, have been, the exclusive representatives of all the employees of the companies in said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours, and other conditions of employment.

VIII. Respondents, by their officers, agents, and bargaining committee have since on or about August 23, 1947, engaged in and are now engaging in a continuous course of restraint and coercion of the employees of the companies in the exercise of their rights guaranteed in Section 7 of the Act in that respondents have:

(a) Attempted to and still attempt to impose upon the employees of the companies in said unit "conditions of employment" requiring membership in respondents as a condition of employment.

(b) From on or about August 23, 1947 to about October 21, 1947 refused to negotiate and enter into any collective agreement with the Association.

(c) Since on or about October 21, 1947 and to date hereof refused and still refuse to negotiate and enter into any collective agreement unless the agreement contains provisions (1) in effect requiring membership in respondents as a condition of employment, (2) that the companies would not require their employees in said unit to handle and/or

process non-union products, and (3) permitting the agreement to be terminated by either party at any time upon sixty days notice.

(d) From on or about October 20, 1947 to about November 23, 1947, instructed, ordered, and required employees of the companies in said unit to engage in a "slow-down" involving unlawful occupancy of the companies' premises by said employees.

IX. By the acts set forth in paragraph VIII (a), (b), (c) and (d) above, respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(b) (1) (A) of the Act.

X. Respondents, by their officers, agents, and bargaining committee, since on or about August 23, 1947, have engaged in and are engaging in a continuous attempt to cause the companies to discriminate against their employees in that respondents have:

(a) Attempted to and still attempt to impose upon the companies and their employees in said unit certain "conditions of employment" requiring membership in respondents as a condition of employment.

(b) Since on or about October 21, 1947, refused and still refuse to negotiate and enter into any collective agreement with the Association unless the agreement contain provisions (1) in effect requiring membership in respondents as a condition of employment, and (2) that the companies would not require their employees in said unit to handle and/or process non-union products.

XI. By the acts set forth in paragraph X (a) and (b), respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (b) (2) of the Act.

XII. Respondents although duly requested by the Association on behalf of the companies, have at all times since on or about August 23, 1947, refused and still refuse to bargain collectively in good faith with the Association with respect to rates of pay, wages, hours of employment and other conditions of employment of the employees of the companies in the writ described in paragraph VI above in that respondents have:

(a) Insisted on imposing upon the companies and their employees certain "conditions of employment" unilaterally promulgated by respondents.

(b) From on or about August 23, 1947 to about October 21, 1947 refused to negotiate and enter into any collective agreement with the Association.

(c) Since on or about October 21, 1947, refused and still refuse to negotiate and enter into any collective agreement with the Association unless the agreement contain provisions (1) in effect requiring membership in respondents as a condition of employment, (2) that the companies would not require their employees in said unit to handle and/or process non-union products, and (3) permitting the agreement to be terminated by either party at any time upon sixty days notice.

XIII. By the acts set forth in paragraph XII (a), (b) and (c) above, respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(b) (3) of the Act.

XIV. The acts and conduct of respondents as set forth in paragraphs VIII, IX, X, XI, XII and XIII above, occurring in connection with the business operations of the companies as described in paragraphs II and III above, have a close, intimate, and substantial relationship to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce, within the meaning of Section 2 (7) of the Act.

XV. The acts of respondents as set forth in paragraphs VIII through XIV above, constitute unfair labor practices affecting commerce, within the meaning of Section 8 (b) (1) (A), (2) and (3) and Section 2 (6) (7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board on behalf of the Board, on the 13th day of January, 1948, issues this Complaint against respondents herein.

George J. Bott
George J. Bott, Regional Director
National Labor Relations Board

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD
(FIRST AMENDED CHARGE)
CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

1. Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that Chicago Typographical Union No. 16 of 130 N. Wells St., Chicago, Ill.) and International Typographical Union (of Indianapolis, Indiana) (have) engaged in and (are) engaging in unfair labor practices within the meaning of Section 8(b) subsections (1)(A), (2) and (3) of said Act, in that: (Recite in detail in paragraph 2 the basis of the charge. Be specific as to names, addresses, plants, dates, places, and other relevant facts).

2. See Appendix B attached hereto and by this reference made a part hereof.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

3. Name of Employer—Chicago Newspaper Publishers Association on behalf of the member Employers shown in Appendix A attached hereto and by this reference made a part hereof.

4. Location of plants involved—Shown on Appendix A. Employing 1600.

5. Nature of business—Publication of daily and Sunday newspapers at Chicago, Illinois.

6. (Paragraphs 6, 7, and 8 apply only if the charge is filed by a labor organization) The labor organization filing this charge, hereinafter called the union, has complied with Section 9(f)(A), 9(f)(B)(1), and 9(g) of said Act as amended, as evidenced by letter of compliance issued by the Department of Labor and bearing code number ..... The financial data filed with the Secretary of Labor is for the fiscal year ending .....
A certificate has been filed with the National Labor Relations Board in accordance with Section 9(f)(B)(2) stating the method employed by the union in furnishing to all its members copies of the financial data required to be filed with the Secretary of Labor.

7. Each of the officers of the union has executed a non-communist affidavit as required by Section 9(h) of the Act.

8. Upon information and belief, the national or international labor organization of which this organization is an affiliate or constituent unit has also complied with Section 9(f), (g), and (h) of the Act.

Chicago Newspaper Publishers Association on behalf of the Employers listed in Appendix A, 211 West Wacker Drive, Chicago, Illinois, Randolph 4900.

By (Signed) John H. O'Keefe
Secretary

Subscribed and sworn to before me this 12th day of January 1948, at Chicago, Illinois as true to the best of deponent's knowledge, information and belief.

(Signed) Andrew C. Hamilton (Seal)

Case No. 13-CB-6
Date filed—Jan 13 1948

APPENDIX A

The member Employers of Chicago Newspaper Publishers Association on behalf of whom these charges are filed by Chicago Newspaper Publishers Association, are as follows:

The Chicago Daily News Inc., 400 West Madison St., Chicago 6, Illinois

Illinois Publishing and Printing Company, 326 West Madison St., Chicago, Illinois

The Journal of Commerce Publishing Company, 12 East Grand Ave., Chicago 11, Illinois

Sun and Times Co., 211 West Wacker Drive, Chicago 6, Illinois

Tribune Company, 435 N. Michigan Avenue, Chicago 11, Illinois

The plants involved are located at the addresses given above of the five Employer members of Chicago Newspaper Publishers Association.

APPENDIX B

A. The International Typographical Union and the Chicago Typographical Union No. 16, which are the representatives of the composing room employees of each of the Employers pursuant to Section 9 (a) of the Labor Management Relations Act, 1947, (hereinafter in these charges referred to as the Act) by their officers, organizers and agents, have since August 23, 1947, and continuing down to and including the date of the filing of these charges:

1. Refused and continue to refuse to bargain collectively in good faith with the Employers by, among other things:
   (a) Proposing that the Employers acquiesce in certain "conditions of employment" unilaterally laid down by said unions and embodied in certain printed forms prescribed by said unions.
   (b) Refusing to execute any contract other than the unions' printed form P-6A, or to submit any contract proposal or counter-proposal to the Employers' proposals other than said printed form P-6A, which form P-6A contains provisions, which are not subject to negotiation, that would require the Employers to take action repugnant to the laws of the United States as set forth in the Act.
   (c) Refusing and failing to meet and confer with the Employers for the purpose of negotiating a new contract, other than said printed form P-6A, to replace the current contract which expired as of October 21, 1947.
   (d) Insisting that the general laws of the International Typographical Union and the local laws of the Chicago Typographical Union No. 16 shall govern conditions of employment in, and operation of, the composing room of the Employers, which laws contain various provisions that would require the Employers to take action repugnant to the laws of the United States as set forth in the Act.

(e) Inducing and encouraging the members of Chicago Typographical Union No. 16 who are the employees of the Employers to engage in concerted activity or activities designed to interfere with or interrupt the Employers' operations for the purpose of coercing the Employers to agree to and acquiesce in certain illegal practices and conditions of employment which are repugnant to the laws of the United States as set forth in the Act.

2. Attempted to and are continuously attempting to cause the Employers to violate Section 8 (a) (3) of the Act.
3. Restrained and coerced and are restraining and coercing the employees of the Employers in the exercise of the rights guaranteed in Section 7 of the Act.

B. The International Typographical Union, by its officers, organizers and agents, has since on or about June 23, 1947, and continuing down to and including the date of the filing of these charges:

1. Dictated and imposed upon Chicago Typographical Union No. 16 the International Typographical Union's program for avoiding and evading the Act, thereby depriving Chicago Typographical Union No. 16 and its officers, organizers and agents, of authority, as the duly designated bargaining representative for the composing room employees of the Employers, to negotiate and execute a collective bargaining contract with the Employers.

IR-1700

UNITED STATES OF AMERICA
Before the National Labor Relations Board
Division of Trial Examiners
Washington, D. C.

In the Matter of Chicago Typographical Union No. 16 and International Typographical Union and Chicago Newspaper Publishers Association on behalf of The Chicago Daily News, Inc. Illinois Publishing and Printing Company The Journal of Commerce Publishing Company Sun and Times Co. Tribune Company	Case No. 13-CB-6

Messrs. Allen Sinsheimer, Jr., and Carroll L. Martin, of Cincinnati, Ohio, for the General Counsel.

Messrs. Gerhard Van Arkel and Henry Kaiser (Van Arkel and Kaiser) of Washington, D. C. and Mr. Clarence R. Martin, of Indianapolis, Ind., for the Respondents.

Mr. Andrew C. Hamilton, (Kirkland, Fleming, Green, Martin & Ellis), of Chicago, Ill., for Chicago Newspaper Publishers Association.

Messrs. Elisha Hanson, William K. Van Allen, and Miss Letitia Armistead, all of Washington, D. C., for American Newspaper Publishers Association.

Messrs. Thurman Arnold and Norman Diamond (Arnold, Fortas & Porter), of Washington, D. C., for Southern Newspaper Publishers Association.

Messrs. Gerard D. Reilly and Charles E. Rhetts, of Washington, D. C., for Inland Daily Press Association.

INTERMEDIATE REPORT

Statement of the Case

Upon a charge filed by Chicago Newspaper Publishers Association, herein called the Association, on behalf of the following employers: The Chicago Daily News, Inc., Illinois Publishing and Printing Company, The Journal of Commerce Publishing Company, Sun and Times Co., and Tribune Company, herein called the Companies, the General Counsel of the National Labor Relations Board, by the Regional Director for the Thirteenth Region (Chicago, Illinois), issued his complaint dated January 13, 1948, against Chicago Typographical Union No. 16, herein called Local No. 16, and International Typographical Union, herein called ITU, alleging that the Respondents had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8 (b) (1) (A), (2), and (3) and Section 2 (6) and (7) of the National Labor Relations Act as amended (June 23, 1947, Public Law 101, 80th Cong., Chapter 120, 1st Sess.), herein called the Act.

With respect to the unfair labor practices, the complaint, as amended at the hearing, alleged that since August 22, 1947, Respondents and each of them:

1. In violation of Section 8 (b) (2), caused and attempted to cause the Companies to discriminate against their employees, (a) by attempting to impose upon the Companies and their employees "conditions of employment" requiring membership in Respondents as a condition of employment, and (b) by refusing, since on or about October 21, 1947, to negotiate and enter into any collective agreement unless the agreement required in effect membership in Respondents as a condition of employment, and, in addition, provided that the Companies would not require their employees to handle and/or process non-union products.

2. In violation of Section 8 (b) (3), refused to bargain collectively in good faith with the Association in an appropriate bargaining unit of all non-supervisory and non-clerical employees of the Companies composing rooms performing work pertaining to printing, (a) by insisting on imposing upon the Companies and their employees certain "conditions of employment" unilaterally promul-

gated by the Respondents, (b) refusing from August 22, 1947, to October 21, 1947, to negotiate and enter into any collective agreement with the Association, and (c) by refusing thereafter to negotiate and enter into any collective agreement with the Association except upon the conditions referred to in 1 (b) above, along with the further condition that the agreement must be terminable by either party at any time upon 60 days' notice.

3. In violation of Section 8 (b) (1), restrained and coerced employees of the Companies in the exercise of their rights guaranteed in Section 7 of the Act, (a) by engaging in the conduct described in paragraphs 1 and 2 above, and (b) by ordering, requiring, causing, and inspiring employees of the Companies in the described unit to engage in slow-downs in support of other unfair labor practices.[1]

Copies of the complaint, accompanied by notice of hearing thereon, were duly served upon the Respondents. On January 14, 1948, prior to the date set for hearing, the General Counsel of the Board entered an order pursuant to Section 203.33 of the Board's Rules and Regulations—Series 5, consolidating, for the purposes of hearing only, the above-entitled proceeding with Matter of International Typographical Union, Case No. 9-CB-5. On January 14, 1948, the General Counsel and the Respondents stipulated in substance that all relevant evidence theretofore received, as well as all proceedings theretofore had, in Case 9-CB-5, including without limitation all special appearances, pleas to the jurisdiction of the Board and motions to dismiss, together with all rulings thereon and exceptions to such rulings, should be considered applicable to the complaint in the instant proceeding with the same force and effect as if the consolidation had been effected prior to the commencement of the hearing in Case No. 9-CB-5. On January 15, 1948, Respondents in the instant proceeding orally answered the complaint, denying generally that they had engaged in the unfair labor practices therein alleged.

Thereafter, the hearing in the consolidated proceedings was held at various dates and places until May 15, 1948,

[1] In the original complaint, the slow-downs were also alleged to have constituted illegal occupancy of the Companies' premises. Upon motion of the General Counsel, made at the conclusion of the hearing, this was ordered deleted from the complaint.

all as set out in the Intermediate Report in Case 9-CB-5, before the undersigned, Arthur Leff, the Trial Examiner duly designated by the Chief Trial Examiner. All parties were represented by counsel, participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the conclusion of the hearing, an unopposed motion of the General Counsel was granted to conform the pleadings to the proof with respect to minor variances not going to the substance of the complaint. Decision was reserved at that time upon Respondents' motion to dismiss the complaint for insufficiency of proof. That motion is disposed of as hereinafter indicated. All parties were afforded opportunity to file briefs and/or proposed findings of fact and conclusions of law, and to argue the issues orally upon the record. The briefs submitted in Case 9-CB-5 have been considered as applicable to the issues of this case.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

Finding of Fact

I. The Association; the business of the Companies

Chicago Newspaper Publishers Association, a voluntary association with offices in the City of Chicago, Illinois, exists for the purposes, among others, of bargaining collectively with labor organizations representing employees of its members. The Chicago Daily News, Inc., Illinois Publishing and Printing Company, The Journal of Commerce Publishing Company, Sun and Times Company, and Tribune Company are members of the Association. At all times herein mentioned the Association has been the designated agent of the Companies for the purpose of bargaining collectively with Respondents and other labor organizations with respect to rates of pay, wages, hours of employment, and other conditions of employment of the Companies' employees.

Each of the Companies is engaged in the business of publishing a daily newspaper in Chicago, Illinois. Each in the course and conduct of its business purchases from sources outside the State of Illinois substantial quantities

of supplies, consisting principally of newsprint and matrix paper; receives for publication in its newspaper substantial amounts of national advertising, national press service news, and national feature articles; and causes substantial quantities of its published newspapers to be sold and transported in interstate commerce from its aforesaid place of business in and through the several States of the United States other than the State of Illinois.[2]

It is found that the Companies are engaged in commerce within the meaning of the Act.

II. The labor organizations involved

Chicago Typographical Union No. 16, and its parent organization, International Typographical Union, are labor organizations within the meaning of the Act.

III. To unfair labor practices

A. The facts upon which the allegation of unfair labor practices are based

The pertinent facts upon which the allegations of unfair labor practices are based have been fully set out in the Intermediate Report issued in the companion case, Case 9-CB-5, with which this proceeding was consolidated. All findings of fact made in the Intermediate Report in Case No. 9-CB5, and particularly those contained in Section III—A, B, C, and D-2, are incorporated by reference and made part of this report, with the same force and effect as if they had again and at length been set out here.

B. Violation of Section 8 (b) (2)

In Case No. 9-CB-5, it was found that Respondent ITU, by its application of the "collective bargaining policy" adopted by the ITU at its 1947 convention, and by its entire course of conduct on a national level, from August 22, 1947, to March 27, 1947, attempted to cause employers to discriminate against employees in violation of Section

[2] Appendix A, attached to the Intermediate Report in Case No. 9-CB-5, and incorporated herein by reference, contains a tabulation showing with respect to each newspaper involved in this proceeding, its approximate daily circulation, the percentage of such circulation that is transported in interstate commerce, the approximate dollar value of its out-of-State purchases, and the percentage of its total advertising volume coming to it from out-of-State agencies or advertisers.

8 (a) (3) of the Act. The record shows that Local No. 16, as well as the ITU applied the same "policy" and engaged in the same course of conduct with particular reference to the Companies involved in this case. Accordingly, and for the reasons set forth in Section E (1) of the Intermediate Report in Case No. 9-CB-5, it is found that Respondents by their entire course of conduct from August 22, 1947, to March 27, 1947, attempted to cause the Companies to discriminate against employees in violation of Section 8 (a) (3).

The complaint in this case also alleges that Respondents violated Section 8 (b) (2), by refusing to enter into any agreement which did not contain a provision that the Companies' employees should not be required to handle and/or process non-union products. For the reasons set forth in Section E (2) of the Intermediate Report in Case No. 9-CB-5, it is found that this allegation does not support a violation of Section 8 (b) (2), and it will accordingly be recommended that the allegation be dismissed.

C. Violation of Section 8 (b) (3)

1. The appropriate bargaining unit

The complaint alleges in substance that all employees of the member companies of the Association performing work pertaining to printing, excluding clerical and supervisory employees, constitute a single appropriate bargaining unit. Respondents' unit position as expressed at the hearing was equivocal. While specifically denying that the alleged unit was an appropriate one, Respondents declined to state expressly what unit or units they contended were appropriate, except that their counsel at one point did assert that he considered the alleged unit to be inappropriate because it did not include the composing room employees of all Chicago newspapers.

It has been the practice of the Association since 1904 to negotiate contracts on behalf of its members with Local No. 16. At least since 1937, the Association has been a party and signatory to all contracts that have been negotiated. Under its bylaws, the Association may not bind a member without the member's concurrence. But an agreement once made by the Association as agent for a member and with its concurrence becomes binding upon that mem-

ber. Although it has been the fairly uniform practice for non-member newspaper publishers informally to adopt the terms and conditions of the Association negotiated newspaper contracts, the Association does not act as the designated agent for such non-members and has no authority legally to bind them. During the 1947 negotiations here in question, Local No. 16 at no time raised any question as the appropriateness of an Association-wide unit. Under all the circumstances, and on the authority of the Advance Tanning[3] and Bercut Richards[4] cases, it is concluded that the composing room employees of only such companies as are members of the Association are appropriately part of the multiple-employer unit.

The last contract between the Association and Local No. 16 did not spell out specific job classifications in the unit's composition. It provided merely that only union members in good standing were to be employed to perform work in the composing rooms. Some question arose during the hearing as to the inclusion or exclusion of certain specific categories of employees who perform work in or about the composing rooms. It was finally agreed that proof press operators, who perform work pertaining to printing, are members of the Union and the unit; but that office boys, metal men, and advertising dispatch boys, whose work does not pertain to printing, are not. In past contracts supervisory employees in the composing rooms had been regarded as within the unit. Since, however, they are now no longer "employees" within the meaning of the Act, as amended, they may no longer appropriately form part of the unit. Matter of Marshall Bruce Co., 75 N.L.R.B., No. 12.

Accordingly, it is found that all employees of the Companies' composing rooms performing work pertaining to printing, including proof-press operators, but excluding office boys, metal men, advertising dispatch boys, clerical and other employees, and all supervisors, as defined in the Act, constitute, and at all times material herein did constitute, a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

2. Representation by Respondents of the employees in the appropriate unit

The complaint alleges, Respondents' answer admits, and it is found, that all the employees of the Companies in

[3] Matter of Advance Tanning Company et al., 60 N.L.R.B. 923.
[4] Matter of Bercut Richards Packing Company et al., 64 N.L.R.B. 133.

the above-described unit designated Respondents, and each of them, as their representatives for the purposes of collective bargaining, and that Respondents, and each of them, are, and at all times material herein have been, the exclusive representatives of all the employees of the Companies in said unit for the purposes of collective bargaining with respect to rates of pay, wakes, hours, and other conditions of employment.[5]

---

[5] The admission made in Respondents' oral answer, that the ITU along with Local No. 16 was the exclusive bargaining representative of the employees in the local unit, appears inconsistent with the general position taken by the ITU in Case No. 9-CB-5, as well as in the other recent cases in which the ITU was joined as a party respondent. However, even if it were assumed that the ITU admission in this case was inadvertent, I would nevertheless, find, on the record of this case, that the ITU was in fact and in law a co-representative with Local No. 16 of the employees in the unit.

As Randolph's testimony shows, no formal bargaining designations are signed by ITU members, and the extent to which they designate the ITU and/or a subordinate local to represent them may be determined only by reference to the constitution, bylaws, and general laws of the ITU, as well as the Local laws, to all of which members subscribe by their act of affiliation. It is evident from these "laws"—the pertinent provisions of which were reviewed in Case No. 9-CB-5—that the distribution of functions between the ITU and its locals under its complex organizational system is such as to integrate each local with the International as a bargaining entity. Locals are vested with a limited area of bargaining autonomy (confined for the most part to issues of wages and certain other economic terms), while control of a large range of bargainable matters is governed by ITU general laws and policy as interpreted by the ITU Executive Council. The power of the ITU to shape and control local bargaining actions was vastly extended by the adoption at the 1947 "collective bargaining policy" under which the membership designated the ITU Executive Council to "interpret, construe and enforce" the bargaining policy applicable to all locals. Although, under the "laws," locals alone are authorized to sign contracts, locals may not, without risking invocation of ITU sanctions, submit any contract proposal to employers, or any tentative agreement to their membership for ratification, unless they first submit it to the ITU and secure the latter's approval. Nor are locals free effectively to negotiate any variations from policy specifications laid down by the ITU. Where an impasse is reached in local negotiations, often as in this case because of the inability of the local to make concessions on policy lines formulated by the ITU, the ITU must be called into the local negotiations. When, as here, the ITU enters upon local negotiations, it in fact, although perhaps not in form, acts as the bargaining representative for the local membership, although it may also have the interests of all locals in mind. It is thus clear that at least for certain purposes and as to certain matters, the ITU does not merely assist and advise its locals, but, pursuant to the prior consent and authorization of the membership, actually shapes and controls bargaining on behalf of local members. As is evident from the Chicago situation, where the publishers asked that Randolph be brought into the negotiations, employers as well

3. The refusal to bargain.

(a)

In its negotiations with the Association from August 22, 1947, to October 21, 1947, Local No. 16, adhering scrupulously to the 1947 ITU convention policy, as interpreted and construed by the ITU Executive Council, made it clear that, while it was prepared to negotiate wages and certain other economic conditions, it could not, and would not, commit itself to any contract, written, verbal or otherwise. This fixed determination not to enter into a binding contract with the Association clearly failed to fulfill the obligation of good faith bargaining required by the Act. Section 8 (d) of the Act defines the process of collective bargaining to include "the execution of a written contract incorporating any agreement reached if requested by either party." It thus restates in statutory form the principle previously established by court and Board decision under Section 8 (5) of the Wagner Act. H. J. Heinz Co. *v.* N.L.R.B., 311 U. S. 514. Contrary to the assertion of Respondents, the question of whether or not a contract should be signed is not a bargainable issue. Matter of The Todd Company, 71 N.L.R.B. 192. Nor is that question prematurely raised where no agreement has yet been reached on substantive terms. The law is clear that where a party to collective bargaining negotiations takes the position, even in advance of a meeting of minds on substantive terms, that it will not sign a contract, its conduct is no less unlawful than it would have been had it refused

[5] (Continued)
as union members fully understand that bargaining is not merely with the local scale committee, but with the local scale committee and the ITU within the framework of ITU laws.

It is not illegal for an international to control the bargaining of its locals. The allocation of authority between an international and its locals is a matter of internal union organization, for the members to decide and not for the Board to approve or condemn. But where, as here, union members vest in an international authority alone to act for them under certain circumstances and to control on their behalf certain aspects of their bargaining relationship with employers, and the international actually assumes such delegated authority and acts thereunder, the international must accept the obligation to bargain that is a necessary concomitant to the authority to bargain (cf. N.L.R.B. v. Swift and Neuhaff Packing Co., 127 F. 2d 30 (C.C.A. 6). To hold otherwise, would be to leave a void in the obligation imposed upon unions to bargain, an obligation which the Act contemplates is to be a comprehensive one, covering all bargainable matters. As has been said, the law, like nature, abhors a vacuum.

to sign a contract after all substantive terms had been agreed upon. In the H. J. Heinz case, the Supreme Court stated that one "could hardly be thought to have bargained in good faith" when he entered into bargaining negotiations for an agreement "with the reservation that he would not reduce it to writing or sign it." The Circuit Court of Appeals, in enforcing bargaining orders of the Board, have held that a demonstrated unwillingness to sign a collective bargaining agreement supplies ample basis for finding a refusal to bargain "despite the fact that at the time of the refusal, no agreement had been reached."[6]

Beginning on October 21, the Local, in accordance with the "change of strategy" announced by the ITU, altered its bargaining positions by offering P-6A as an alternative to no contract at all. The complaint alleges that Respondents bargained in bad faith from that date forward by refusing to negotiate any agreement which did not contain provisions, (1) in effect requiring membership in Respondents as a condition of employment, (2) permitting the agreement to be terminated upon 60-day notices, and (3) calling upon the Companies not to require employees to handle and/or process non-union products.[7]

As was found in Case No. 9-CB-5, Form P-6A was not designed as a legally enforceable closed-shop contract; nor was it represented as such or so understood at the Chicago negotiations. But in presenting P-6A at Chicago, no effort was made to conceal from the publishers—indeed, it was openly declared— that a principal objective of the 60-day clause was to enable the Union to cancel the contract and then to strike, ostensibly for legal objectives, in the event, among others, that non-union men

[6] N.L.R.B. v. Register Publishing Company, 141 F. 2d 156, 160 (C.C.A. 9). See also, Art Metals Construction Co. v. N.L.R.B., 110 F. 2d 148, 150 (C.C.A. 2). N.L.R.B. v. Brozen, 166 F. 2d 812. N.L.R.B. v. National Seal Corp., 127 F. 2d 776, 779.

[7] Consideration of the refusal to bargain aspect of this case will be limited to the issues specifically framed by the complaint. Although the General Counsel in his brief covering this case and Case No. 9-CB-5 asserts that the Union's insistence upon other provisions contained in P-6A—such as the clauses relating to ITU General Laws, jurisdiction, picket line, and liability limitation—also evidenced bad faith bargaining, the record is clear that no issue was raised by the publishers in the Chicago negotiations with regard to these clauses. For that reason, and because they fall outside the scope of this complaint, these clauses need not, and will not, be considered here.

were hired. There was thus implicit in P-6A, as a practical matter, the requirement that publishers would be obliged to maintain in effect closed-shop hiring practices if they desired to continue uninterrupted operations. It was clear from the bargaining position of the Union that its intransigent determination to condition agreement upon the inclusion of the minimum cancelation period which the law allows was unconnected with any reluctance on its part to freeze economic terms, such as wages, for any greater period.

The question of the length of a contract term is ordinarily one for negotiation between the parties. A refusal to agree to a term of 1 year, or of any other particular duration, does not per se constitute a refusal to bargain in the same absolute sense that a refusal to agree to a contract in writing constitutes such refusal. But since a primary objective of a collective bargaining contract is to stabilize labor relations for periods of reasonable duration, insistence, in the absence of special circumstances, by an employer or a union upon a contract of indefinite duration terminable upon relatively short notice may evidence a bad faith approach to the collective bargaining process.[8] In the instant case no special circumstances were advanced by the Union for departing from the traditional practice of signing contracts for a fixed duration term of a year, other than a desire to protect the "rights" of its members not to work with non-union men, or on non-union goods, or where its jurisdiction was interfered with. Respondents made it clear that the primary purpose of the 60-day cancellation clause was to circumvent the statutory restrictions of Section 8 (b) (2), 8 (b) (4) (A), and 8 (b) (4) (D), by placing the Union in a position after a 60-day waiting period, where it could cancel the contract and then strike ostensibly for legal objectives in the event any of these "rights" were infringed. Under the circumstances it cannot be said that Respondents' insistence upon the 60-day clause had a legitimate economic justification. For these reasons and because, as found in Case No. 9-CB-5,

[8] See **Matter of Armour & Co. of Delaware**, 48 N.L.R.B. 1412, 1413-1414, 1425, where the Board held that a "refusal to enter into a contract for a fixed term constitutes a refusal to bargain collectively." In so holding the Board observed that "no showing is made by the respondent of any special circumstances making such a short term (30 days) reasonable." See also **Matter of Stonewall Cotton Mills**, 36 N.L.R.B. 241, 262-264.

the Union's stand on the 60-day clause was, under the particular facts of this case, part of a course of conduct violative of Section 8 (b) (2), it is found that Respondents, by insisting on that clause, failed to bargain in good faith.

Nor, in the circumstances of this case, was Respondents' failure to bargain excused by the publishers' steadfast refusal to negotiate wages until, as had been the practice in the past, a contract framework was first agreed upon. For purposes of decision in this case it is unnecessary to decide whether the publishers' adamant refusal to discuss wages or to submit a complete counterproposal throughout the negotiations was violative of their duty to bargain under the Act. A separable obligation to bargain is imposed by the Act upon employer and union alike. The public policy underlying that obligation is no less thwarted where both sides refuse to bargain. To be sure, one party's "refusal to bargain in good faith may remove the possibility of negotiation and thus preclude the existence of a situation in which the [other party's] own good faith can be tested. If it cannot be tested, its absence can hardly be found." Matter of Times Publishing Company, 72 N.L.R.B. 676, 683. That, however, is not the situation here. In this case, the Union's good faith can be tested quite independently of the position taken by the publishers in the negotiations. The record is clear that Respondents' refusal prior to October 21 to enter into any contract at all, and its alternate position thereafter for a contract terminable within the minimum period allowed by law, was neither provoked by nor related to the refusal of the publishers to discuss wages or to submit a complete counterproposal. It was traceable directly to the bargaining policy adopted at the 1947 ITU Convention, as that policy was interpreted, construed and applied by the ITU Executive Council.

It is found that Respondents, as the exclusive bargaining representatives of the employees in the appropriate unit, failed and refused, on and after August 23, 1947, to bargain collectively in good faith with the Association and its member-companies.

(b)

There remains for consideration, then, the question of whether the Union's position with regard to clause (g) of P-6A—the "struck-work" clause—constituted a refusal

to bargain.[9] This clause, as the record shows, was not a major issue in the Chicago negotiations, where only passing reference was made to it. Together with the other provisions contained in paragraphs (a) through (i) of P-6A, it was, however, presented to the publishers as one of the clauses, which the Union stated it must have in substance in order to protect its interests. The Union indicated that it was willing to have the language of the clause altered so long as the substance of it was retained. The publishers, however, declining to suggest any revisions to the clause, simply took the position that any undertaking on their part, in whatever form, not to process struck or substandard material was illegal.[10] Thus, it was solely on the question of the legality of any struck-work clause that the parties joined issue.

The General Counsel does not dispute that an employer, without violating the Act, may of his own volition deal or refuse to deal with such firms, union or non-union, as he chooses. He contends, however, that a Union's demand that an employer join with it in a contractual undertaking not to handle certain products is a demand for an illegal condition, constituting per se bad faith bargaining. More specifically, it is argued that such an undertaking would nullify the public policy expressed in Sections 8 (b) (4) and 303 of the Act; that it would constitute inducement and encouragement to employees to engage in activities in contravention of Section 8 (b) (4); and that it would illegally require an employer to waive the right granted him by statute to file charges against a labor organization that engaged in activity proscribed by Section 8 (b) (4). It is further argued that the reservation by the Union in clause (g) of the right unilaterally to determine what goods are produced under "substandard" conditions is repugnant to the principle that one does not bargain in good faith when he insists upon reserving to himself the right to unilateral action affecting

[9] The issue of whether a demand for such a clause constitutes an independent violation of Section 8 (b) (1) and 8 (b) (2) has been separately treated in Case No. 9-CB-5. The conclusions there made are incorporated in this report.

[10] As the terms are used by unions, it is generally understood that "substandard materials" means goods produced under non-union conditions; "struck work" means work produced by men on strike; and "unfair goods" includes both struck and substandard work. It is clear from the record that the Union contemplated clause (g) to cover all these categories.

conditions of employment." A final argument is that an agreement between a union and a multiple-employer group of publishers not to use the products of certain printing shops would be violative of the Federal Anti-Trust Acts.[11] I find these arguments unpersuasive.

The only conduct made illegal by statute, and the only conduct declared, therefore, contrary to public policy is for a labor organization, in support of certain stated objectives, "to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use etc." The statute does not prohibit an employer and a union from entering into an agreement under which the employer undertakes not to use certain products; nor does it prohibit collective bargaining with respect to that subject. The statute leaves it open for an employer, whether voluntarily or through a collective bargaining agreement, to assist a union in the protection of its working standards by refusing to buy goods produced under non-union conditions. It is difficult to perceive how such an agreement would encourage employees to engage in strikes or concerted refusals to work. It would appear that an agreement not to handle "substandard" goods, if faithfully complied with by an employer, as it must be presumed it would be, would tend rather to remove the possibility of a situation arising where employees would engage in a strike or concerted refusal to work for the purpose of forcing their employer to cease using products of another employer. Nor does insistence upon a "struck work" clause illegally condition bargaining upon an employer waiving his right to file charges against a labor organization engaging in conduct proscribed by Section 8 (b) (4). A right to file charges does not mature until a situation has arisen where it is believed a violation of the Act has already occurred. The Union's collective bargaining demand was therefore not conditioned upon the withdrawal by the employers of any right, previously matured, to file charges.[12] While an agreement not to file

[11] This argument is advanced in the briefs filed by Inland Daily Press Association and the ANPA in Case No. 9-CB-5. It is not made in the General Counsel's brief.

[12] The cases relied upon by the General Counsel, holding that an employer may not condition bargaining on the withdrawal of charges, are inapposite. In those cases alleged violations of the Act had already occurred at the time of the bargaining conference, and the Unions were being asked to give up rights which had already matured.

charges in appropriate situations would undoubtedly be illegal, the "struck work" clause cannot be construed as requiring such an undertaking. All it calls for is an agreement by the employer that he will so conduct his operations as to avoid the development of a situation where occasion for filing 8 (b) (4) charges or a suit under Section 303 may arise.

An agreement which reserves to one party the right to engage in unilateral action with respect to matters that may more appropriately be the subject of collective bargaining is not per se illegal, although insistence upon such a reservation may, under certain circumstances, evidence an unwillingness to bargain in good faith. Previous agreements between the Union and the Association allowed the Union in effect to refuse to work on "struck" or "unfair" goods. In the 1947 negotiations, no point was raised by the publishers concerning the language of clause (g) under which the Union reserved the right of unilateral definition. The only issue was whether any "struck work" clause was legal. On the record of this case, therefore, it cannot be concluded that the Union "insisted" on unilateral action or that its position in that regard evidenced bad faith.

The point that a "struck work" clause may lead employers to violate Federal Anti-Trust laws was fleetingly raised during the Chicago negotiations. Past contracts between the Union and the Chicago publishers had contained substantially similar provisions, but had apparently not been regarded by the publishers as subjecting them to the legal hazards of such laws. From my examination of the authorities, I am not satisfied that, under the circumstances of this case, the inclusion of a struck work provision in a bargaining agreement between the Union and the Chicago Publishers Association would have subjected the employer members of the Association to liability under the Anti-Trust Laws; indeed, the authorities appear to a contrary conclusion.[13] In any event, the

[13] See **Apex Hosiery Co. v. Leader**, 310 U.S. 469, 502-504; **United States v. Hutcheson**, 312 U. S. 219; **Allen Bradley v. Local No. 3**, U.S. 797. In the **Allen Bradley** case, where the Supreme Court held that a union (and presumably employers as well) could be enjoined under the Sherman Act from making a contract with employers under which the parties agreed to boycott and ban from the New York City area equipment (both union and non-union produced) manufactured outside its

question of legality under the Anti-Trust Laws of such a clause in the situation here presented may, at most, be regarded as a doubtful one that admittedly has never been squarely determined. Under the circumstances, the Union had as much right to insist that it was not illegal as the publishers had to insist that it was, and,—particularly since similar clauses had been part of past contracts and nothing had in the meantime intervened to infringe on the legality of this clause under the Anti-Trust Laws—it cannot be said that the Union's refusal to concede the point evidenced bad faith bargaining.

It is found, on the record of this case, that the Union's bargaining position on the "struck work" clause did not constitute a refusal to bargain.

D. Alleged violation of Section 8 (b) (1) (A)

It is alleged that Respondents restrained and coerced the Companies' employees in the exercise of their rights under Section 7 of the Act, by, (1) refusing to bargain, (2) attempting to impose "conditions of employment" requiring membership in Respondents as a condition of employment, and (3) causing employees of the Companies to engage in slow-downs.

For the reasons set out in Case No. 9-CB-5, I find that Respondents, by refusing to bargain, did not illegally restrain and coerce the Companies' employees. For similar reasons, I am led to the conclusion that Respondents did not violate Section 8 (b) (1) (A), by attempting to

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[13] (Continued)
boundaries, the Court emphasized that the vice of the agreement in that case was that it looked not merely to terms and conditions of employment, but that it was part of a larger program which was aimed at achieving monopoly and market control by employers. The Court said in part (at p. 809):

> Since union members can without violating the Sherman Act strike to enforce a union boycott of goods, it is said they may settle the strike by getting their employers to refuse to buy the goods. * * * We may assume that such an agreement standing alone would not have violated the Sherman Act. But it did not stand alone. It was but one element in a far larger program in which contractors and manufacturers united with one another to bar all other business men from the area and to charge the public prices above a competitive level.

In the Apex case, the Court stated (at pp. 503-4):

> Since in order to render a labor combination effective it must eliminate competition from non-union goods * * * an elimination of price competition based on differences in labor standards is the objective of any national labor organization. But this effect on competition has not been considered to be the kind of curtailment of price competition prohibited by the Sherman Act.

cause the Companies to require membership in the Union as a condition of employment. In pursuing their attempt, Respondents acted in a representative capacity on behalf of and with the prior consent and approval of the Companies' employees, all of whom were union members. To hold that Respondents under these circumstances restrained and coerced their own members is to indulge in an assumption unsupported in fact and unwarranted in law. Had the Companies acquiesced in Respondents' attempt to cause the Companies to accept the Union's conditions of employment, it is true that this would have established employment conditions under which employees would have been restrained to acquire and retain union membership as a condition of employment. But as the record shows, Respondents' attempt failed. An abortive attempt, not itself coercive as to employees, to achieve a condition which if established would tend to restrain and coerce employees in the exercise of their rights under Section 7, does not itself constitute restraint and coercion.[14] An adequate remedy for this situation is provided for by Section 8 (b) (2), which has been here found to have been violated, and there is no need, and certainly no justification, to stretch the application of Section 8 (b) (1) (A) beyond what the legislative history reflects was intended by Congress, to achieve the same result.

In Case No. 9-CB-5, it was found that the record failed sufficiently to establish responsibility on the part of the ITU for the slow-downs at Chicago. While there is some evidence from which an inference may be drawn of responsibility on the part of Local No. 16 for at least certain phases of the slow-down, such as the extended chapel meetings, I am, nevertheless, not persuaded that a violation of Section 8 (b) (1) (A) has been established. Slow-downs, standing alone, are not made unfair labor practices under the Act. A slow-down may constitute a violation of Section 8 (b) (1) (A) only if it forms an integral part of a course of conduct which in totality violates that section. The only discernible objective of the slow-down at Chicago was to impose pressure upon the Companies to submit to the Union's bargaining demands and to enter

[14] E.g., an unsuccessful attempt by an employer to induce a union to permit him to insert in employment application forms a question calling for a statement of an applicant's union affiliation.

into negotiations on the subject of wages. The means employed were undoubtedly coercive as to the employers. But—particularly since, as found above, Respondents' over-all conduct does not establish a violation of Section 8 (b) (1) (A)—I am unable to conclude that the slowowns constituted part of a course of conduct coercive as to the Companies' employees, or that the self-organizational rights of such employees were thereby otherwise invaded.

I shall, accordingly, recommend dismissal of the 8 (b) (1) (A) allegations of the complaint.

IV. The effect of the unfair labor practices upon commerce.

The activities of Respondents set forth in Section III above, occurring in connection with the operations of the Companies described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and, insofar as they have been found to constitute unfair labor practices, tend to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Having found that Respondents, and each of them, have engaged in certain unfair labor practices, it will be recommended that they, and each of them, cease and desist from engaging in such unfair labor practices, and also take certain affirmative action which, it is found, will effectuate the policies of the Act. For reasons indicated in Case No. 9-CB-5, it will be recommended that the cease and desist order remedying Respondents' violation of Section 8 (b) (2) cover not only activities of the specific kind herein found illegal, but activities which in any manner cause or attempt to cause employers to violate Section 8 (a) (3) of the Act. It will also be recommended that the order remedying Respondents' violation of Section 8 (b) (3), include a provision requiring Respondents to bargain for a bilateral collective bargaining contract for a definite term of fixed duration in conformity with the practice and custom established by past bargaining with the Chicago Newspaper Publishers Association. Although as found above, the question of the length of a contract term is ordinarily one for negotiation between the parties, and a contract for indefinite duration

does not, standing alone, evidence bad faith bargaining, it is established by the facts of this case that Respondents' insistence upon a contract of indefinite duration, with a 60-day cancellation clause, was motivated not by legitimate economic considerations, but, rather, was designed to achieve objectives at variance with the policies of the Act. Consequently, the recommended order has been framed in the manner indicated in order to guard against a repetition of such conduct. The record discloses that the refusal to bargain at Chicago stemmed directly from the interpretation, construction and enforcement of the "collective bargaining policy" which was adopted by the ITU at the Cleveland convention of August 1947. The record further discloses that the ITU "collective bargaining policy," as so interpreted and construed, was applied not only at Chicago, but by ITU locals throughout the country. It will, therefore, be recommended that Respondent ITU be ordered to rescind all instructions, post-card bulletins, forms and other documents by which it has given effect to, construed, and enforced such policy, and that it notify all persons to whom such documents were sent, that the advice, instructions and directions contained therein should be wholly disregarded. It will also be recommended that Respondent ITU be required to publish a notice to that effect in its official publication. This notice shall be in addition to that required by the recommended order in Case No. 9-CB-5.

Upon the basis of the above findings of fact and upon the entire record of the case, I make the following:

Conclusions of Law

1. Chicago Newspaper Publishers Association, at all times material herein, has been, and is, a voluntary organization existing for the purpose of bargaining collectively with labor organizations representing employees of its members. The employer Companies named in the caption of this case at all times material have been, and are, members of the Association, and the Association has been, and is, the agent of said employers for the purposes of bargaining collectively with Chicago Typographical Local No. 16 and the International Typographical Union and other labor organizations, with respect to rates of

pay, wages, hours of employment, and other conditions of employment.

2. Each of the employer Companies named in the caption of this case is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

3. Chicago Typographical Union No. 16 and International Typographical Union are labor organizations within the meaning of Section 2 (5) of the Act.

4. All employees of the employer Companies' composing rooms performing work pertaining to printing, including proof-press operators, but excluding office boys, metal men, advertising dispatch boys, clerical and other employees, and all supervisors as defined in the Act, constitute, and at all times herein referred to constituted, a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

5. Chicago Typographical Union No. 16 and International Typographical Union were on August 23, 1947, and at all times thereafter have been, and now are, the exclusive bargaining representatives of the employees in the aforesaid unit for purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

6. By attempting to cause the employer Companies named in the caption of this case to employ in their composing rooms only members of Chicago Typographical Union No. 16 and the International Typographical Union, Respondents, and each of them, attempted to cause said Companies to discriminate against their employees in violation of Section 8 (a) (3) of the Act, and thereby engaged in unfair labor practices within the meaning of Section 8 (b) (2) of the Act.

7. By refusing on August 23, 1947, and thereafter, to bargain collectively in their capacity as exclusive bargaining representatives of the employees in the aforesaid appropriate unit, with the Chicago Newspaper Publishers Association, in its capacity as the representative of its employer members, Respondents, and each of them, engaged in unfair labor practices within the meaning of Section 8 (b) (3) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

9. Respondents have not restrained or coerced em-

ployees in the aforesaid unit in the exercise of the rights guaranteed in Section of the Act, and have not engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, it is recommended that Respondents, Chicago Typographical Union No. 16 and International Typographical Union, and their officers and agents, shall:

1. Cease and desist from:

(a) In any manner promulgating, pursuing, observing, or in anywise giving effect to any policy, practice, or course of conduct, including without limitation conditions of employment and contracts containing provisions for cancellation of an entire agreement on 60 days' notice, an object of which is to cause, or which in any manner, causes or attempts to cause, the employer members of the Chicago Newspaper Publishers Association, or any other employer, to discriminate against employees in regard to hire or tenure of employment, or any term or condition of employment, because of non-membership in Chicago Typographical Union No. 16 and/or International Typographical Union, except in accordance with the provisos to Section 8 (a) (3) of the Act;

(b) In any other manner, causing or attempting to cause employer members of Chicago Newspaper Publishers Association, or any other employer, to discriminate against employees in regard to their hire or tenure of employment, because of non-membership in Chicago Typographical Union No. 16 and/or International Typographical Union, except in accordance with the provisos to Section 8 (a) (3) of the Act;

(c) Refusing to bargain collectively in good faith, in their capacity as exclusive bargaining representatives of all employees of the Chicago Newspaper Publishers Association member-companies[15] composing rooms who perform work pertaining to printing (including proofpress operators, but excluding office boys, metal men, advertising dispatch boys, clerical and other employees,

[15] The Chicago Daily News Inc., Illinois Publishing and Printing Company, The Journal of Commerce Publishing Company, Sun and Times Co., and Tribune Company.

and all supervisors as defined in the Act), with the Chicago Newspaper Publishers Association, in its capacity as the representative of its member-companies, with respect to rates of pay, wages, hours of employment and other conditions of employment, and with respect to the negotiation of a bilateral collective bargaining contract for a definite term of reasonable duration in conformity with the practice and custom established by past bargaining with the Chicago Newspaper Publishers Association.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Upon request bargain collectively in good faith, as the exclusive representative of the employees in the unit set out in paragraph 1 (c), with Chicago Newspaper Publishers Association, as the representative of its member-companies, with respect to rates of pay, wages, hours of employment, and other conditions of employment, and with respect to the negotiation of a bilateral collective bargaining contract for a definite term of reasonable duration in conformity with the practice and custom established by past bargaining with the Chicago Newspaper Publishers Association, and, if an agreement is reached, embody such an agreement in a written contract to be signed by Chicago Typographical Union No. 16 and approved by International Typographical Union;

(b) Post immediately at conspicuous places at the business office of Chicago Typographical Union, and at such other places where notices or communications to members are customarily posted, and maintain for a period of at least sixty (60) days, copies of the notice attached hereto and marked Appendix A;

(c) Notify the Regional Director for the Thirteenth Region in writing within twenty (20) days from the receipt of this Intermediate Report what steps have been taken to comply herewith.

It is further recommended that the International Typographical Union, its officers, representatives and agents take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Rescind the instructions, post-card bulletins, forms and other documents by which its Executive Council has given effect to, construed and enforced the collective bargaining policy adopted at its Cleveland con-

vention of August 1947, now embodied in Section i, Article III, of the ITU General Laws, and notify all officers, agents, and members of Respondent ITU, or its subordinate unions, to whom such documents were sent, that the advice, instructions, and directions contained therein should be wholly disregarded;

(b) Publish in the Typographical Journal, official paper of the International Typographical Union, in addition to the notice appended to the Intermediate Report in Case 9-CB-5, copies of the notice attached hereto and marked Appendix B;

(c) Notify the Regional Director for the Thirteenth Region in writing within twenty (20) days from the receipt of this Intermediate Report what steps it has taken to comply herewith.

It is further recommended that unless Respondents shall within twenty (20) days from the receipt of this Intermediate Report notify the said Regional Director in writing that they will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring Respondents to take the action aforesaid.

It is further recommended that the complaint be dismissed with respect to all such allegations thereof as allege that Respondents restrained and coerced employees of the Companies in the exercise of their rights guaranteed in Section 7 of the Act.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board, Series 5, effective August 22, 1947, any party may, within twenty (20) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.45 of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and six copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other party of the record or proceeding (includinng rulings upon all motions or objections) as he relies on, together with the original and six copies of a brief in support thereof; and any party may, within the same period, file an original and six copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each of the other

parties. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in said Section 203.46, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations, and recommended order herein contained shall, as provided in Section 203.48 of said Rules and Regulations be adopted by the Board and become its findings, conclusions, and order, and all objections and exceptions thereto shall be deemed waived for all purposes.

Arthur Leff
Arthur Leff
Trial Examiner

Dated: August 6, 1948

APPENDIX A

NOTICE TO MEMBERS OF CHICAGO TYPOGRAPHICAL UNION NO. 16 PURSUANT TO THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby give notice that:

We Will Not in any manner promulgate, pursue, observe, or in anywise give effect to any policy, practice, or course of conduct, including without limitation conditions of employment and contracts containing provisions for cancellation of an entire agreement upon 60 days' notice, an object of which is to cause, or which in any manner causes or attempts to cause, the employer members of the Chicago Newspaper Publishers Association, or any other employer, to discriminate against employees in regard to hire or tenure of employment, or any term or condition of employment, because of non-membership in Chicago Typographical Union No. 16 and/or International Typographical Union, except in accordance with the provisos to Section 8 (a) (3) of the National Labor Relations Act.

We Will Not in any other manner cause or attempt to cause employer members of Chicago Newspaper Publishers Association, or any other employer, to discriminate against employees in regard to their hire or tenure of employment, because of non-membership in Chicago Typographical Union No. 16 and/or International Typographical Union, except in accordance with the provisos to Section 8 (a) (3) of the National Labor Relations Act.

We will, upon request, bargain collectively in good faith in our capacity as exclusive representatives of all employees in the bargaining unit described, with Chicago Newspaper Publishers Association, as the representative of its member-companies, with respect to rates of pay, wages, hours of employment, and other conditions of employment, and with respect to

the negotiation of a bilateral collective bargaining contract for a definite term of reasonable duration in conformity with the practice and custom established by past bargaining with the Chicago Newspaper Publishers Association, and, if an agreement is reached, we will embody such agreement in a written contract to be signed by Chicago Typographical Union No. 16 and approved by International Typographical Union.

The bargaining unit is:

All employees of the composing rooms of the member companies of Chicago Newspaper Publishers Association (Chicago Daily News, Inc., Illinois Publishing and Printing Company, The Journal of Commerce Publishing Company, Sun and Times Co., and Tribune Company) who perform work pertaining to printing, including proof-press operators, but excluding office boys, metal men, advertising dispatch boys, clerical and other employees, and all supervisors as defined in the National Labor Relations Act as amended.

CHICAGO TYPOGRAPHICAL UNION NO. 16

By .....

Title

INTERNATIONAL TYPOGRAPHICAL UNION

By .....

Title

Dated .....

This notice must remain posted for sixty (60) days from the dates hereof, and must not be altered, defaced, or covered by other material.

APPENDIX B

NOTICE PURSUANT TO THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the Labor Management Relations Act of 1947, we hereby notify our members that:

We Hereby Rescind all instructions, post-card bulletins, forms and other documents giving effect to, interpreting, and construing the collective bargaining policy adopted at our Cleveland convention of August 1947 and now embodied in Section 1, Article III of our General Laws. All advice, instructions and/or directions contained therein shall be wholly disregarded.

INTERNATIONAL TYPOGRAPHICAL UNION

By .....

(Title

(for the Executive Council)

Dated .....

UNITED STATES OF AMERICA
Before the
National Labor Relations Board

In the Matter of Chicago Typographical Union No. 16 and International Typographical Union and Chicago Newspaper Publishers Association on behalf of The Chicago Daily News, Inc. Illinois Publishing and Printing Company The Journal of Commerce Publishing Company Sun and Times Co. Tribune Company	Case No. 13-CB-6

RESPONDENTS' EXCEPTIONS TO TRIAL EXAMINER'S INTERMEDIATE REPORT

The respondents, the Chicago Typographical Union No. 16 and the International Typographical Union, hereby take the following exceptions to the Intermediate Report of Trial Examiner Arthur Leff, dated August 6, 1948:

1. To those Findings of Fact which indicate that the respondents have violated Sections 8 (b) (2) and 8 (b) (3) of the Labor-Management Relations Act, said Findings of Fact being unsupported by competent evidence and contrary to law.

2. To the Conclusions of Law numbered 5, 6, 7 and 8, said conclusions being premised on erroneous Findings of Fact and contrary to law.

3. To the Recommendations that the respondents cease and desist from the described activities and that they take the prescribed affirmative action.

Wherefore, the Board is respectfully requested to set aside the Trial Examiner's findings, conclusions and recommendations specified herein and to substitute findings and conclusions which conform with the facts in the record and with the provisions of the Act.

Respectfully submitted,
Van Arkel and Kaiser
Van Arkel and Kaiser
1830 Jefferson Place, N. W.
Washington 6, D. C.

CERTIFICATE OF SERVICE

City of Washington }
District of Columbia } ss:

I, EUGENE GRESSMAN, a member of the firm of Van Arkel and Kaiser, hereby certify that a copy of the Respondents' Exceptions to Trial Examiner's Intermediate Report in the above entitled case has been duly served on all of the parties involved by mailing same to them on October 15, 1948.

Eugene Gressman

UNITED STATES OF AMERICA
Before the National Labor Relations Board

In the Matter of Chicago Typographical Union No. 16 and International Typographical Union and Chicago Newspaper Publishers Association on behalf of The Chicago Daily News, Inc. Illinois Publishing and Printing Company The Journal of Commerce Publishing Company Sun and Times Co., and Tribune Company	Case No. 13-CB-6

DECISION and ORDER

On August 6, 1948, Trial Examiner Leff issued his Intermediate Report finding that the Respondents: (1) had engaged in unfair labor practices within the meaning of Section 8 (b) (2) and 8 (b) (3) of the Act, and recommending that the Respondents and each of them cease and desist therefrom and take certain affirmative action; and (2) had not engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act, and recommending that the complaint be dismissed as to that portion alleging the violation of Section 8 (b) (1) (A). Thereafter, all parties to these proceedings filed exceptions to the Intermediate Report and supporting briefs.

On May 24, 1949, the Board heard oral argument at Washington, D. C., in which all parties participated.

The Board has reviewed the Trial Examiner's rulings made at the hearing and finds that no prejudicial errors were committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions, briefs, the oral argument, and the entire record in the case and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, to the extent that they are consistent with our Decision and Order herewith.

The complaint in this proceeding is one of a series framed

to explore and remedy the effect of the application at particular locales of the "Collective Bargaining Policy," as adopted at the 1947 ITU convention and as construed thereafter by the officers of the Respondent ITU. This proceeding is specifically focused on the activities of the Respondent ITU and its subordinate Local in Chicago, Illinois, during the course of the negotiations[2] they conducted on and after August 22, 1947, with employer members of the newspaper-publishing industry in the Chicago, Illinois, area.

Insofar as the pertinent facts are concerned, we need do no more here than to state that we are fully satisfied that the Trial Examiner's narration of what took place in the Chicago area during the period here in question accurately reflects the record to the extent here material. Such facts disclose, as the Trial Examiner found, that the Respondents actually applied and followed the terms of the "Collective Bargaining Policy"[1] in "negotiating" with the newspaper publishers.[2] Accordingly, and for the reasons stated in our decision in the ANPA case we find, as did the Trial Examiner, that by applying the Policy in the negotiations with the Chicago newspaper publishers, the Respondents were attempting to cause these publishers to discriminate against non-union employees, thereby violating Section 8 (b) (2) of the Act.

We also agree with the Trial Examiner's conclusions that by the application of the ITU 1947 "Collective Bargaining Policy" in the course of the Chicago negotiations, the Respondents engaged in conduct proscribed by Section 8 (b) (3) of the Act. The record overwhelmingly establishes, as is more fully set forth in the Intermediate Report, that, on the union side, negotiations between August 23 and October 21, 1947, were deliberately conducted under the "Policy" scheme so as to avoid the making of any bilateral agreement, written or oral, with respect to any matters properly the subject of negotiation and agreement. As the Trial Ex-

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86 N. L. R. B., No. 116.

[1] Sometimes referred to herein as the "Policy." The nature and effect of the "Policy" is fully treated in our decision in Matter of American Newspaper Publishers Association, et al., 86 N. L. R. B., No. 115. This case is hereinafter referred to as the "ANPA case."

[2] As found hereafter, both Respondents (i.e., the ITU and the Local Union) were jointly designated as bargaining representatives by the employees forming the appropriate unit.

aminer indicates, and we expressly affirm his reasoning in this respect, such a deliberate frustration of the operation of the bargaining process violates the Act, in that it reflects a complete negation of that duty to bargain which the amended Act imposes upon statutory representatives of employees.[3]

The events succeeding the formulation of the "P-6A" bargaining strategy, reflected here in the negotiations taking place after October 21, 1947, do not, in our view, disclose any abandonment by the Respondents of their initial plan to block the making of any bilateral contract. For, as noted in the ANPA case, the "P-6A" contract form, as Respondent ITU explained to its membership, was designed to "make the 'Conditions of Employment' form more desirable to the employers," while at the same time reflecting an ostensible willingness on the part of Respondents to abide by the statutory requirement of "good faith" execution of the duty to bargain. It is thus apparent that the proffer of "P-6A" as an alternate method of establishing an employer-employee working arrangement did not reflect a good-faith attempt to negotiate a mutually satisfactory contract, but was designed to cause the Employers to capitulate to the Respondents' unlawful demand for a non-contractual relationship viz., to operate under unilaterally promulgated conditions of employment.

In any event, we are satisfied that, as the Trial Examiner found, the insistence of the Respondents upon the 60-day cancellation clause in the "P-6A" contract form,[4] independ-

[3] Our decisions in **National Maritime Union of America, et al.**, 78 N. L. R. B. 971, enforced ..... F. 2d ....., 24 LRRM (C.A. 2); **American Radio Association, et al.**, 82 N. L. R. B., No. 151, and the **Great Atlantic and Pacific Co., et al.**, 81 N. L. R. B., No. 130, indicate that we, like the Trial Examiner, believe that Section 8 (b) (3) of the Act imposes upon labor organizations a duty to bargain coextensive with the duty long-since imposed upon employers by Section 8 (a) (5) of the Act, and that the provisions of Section 8 (d) defining the standard of good-faith bargaining restate, in statutory form, the principles established under Section 8 (5). As noted by the Trial Examiner, the statutory obligation to bargain includes the duty to reduce any agreement arrived at to writing, **Heinz Co. v. N. L. R. B.**, 311 U. S. 514, 523-526. It is likewise free from doubt that an announcement at the outset of conferences of an unwillingness to reduce a contract to writing is per se violative of the Act. See in addition to cases cited by Trial Examiner at page 7, ftn. 6, **N. L. R. B. v. Todd**, 173 F. 2d 705 (C. A. 2).

[4] Even in those cases where there was a willingness to deviate slightly.

ently establishes a continuing disregard on and after October 1 of the good-faith standards of bargaining required by the Act. As set forth in the Intermediate Report, the primary objective of collective bargaining is to stabilize labor relations for periods of reasonable duration. To this end the parties had, before 1947, traditionally bargained for and executed contracts for a fixed duration of 1 year. The Respondents' unwillingness to consider the traditional term, evidenced by their refusal to bind themselves contractually for more than 60 days, raises in and of itself a presumption that the Respondents were not bargaining in good faith.[5] The record shows no lawful or reasonable economic justification for such a refusal. Indeed, as we have already noted, it establishes that the 60-day cancellation clause was deliberately designed, and was adamantly insisted upon, to effect the exclusion of non-union men, squarely in conflict with the provisions of the amended Act. As found in the ANPA case, under this arrangement the Respondents intended to place themselves in a position whereby they could with contractual impunity call a strike ostensibly with regard to economic matters otherwise settled in the cancelable agreement, in order to force the Employer non-contractually to maintain closed-shop conditions.

It further appears from the Intermediate Report that in evaluating the conduct of the Chicago negotiations on and after August 22, 1947, for the purposes of determining the 8 (b) (3) aspects of the complaint, the Trial Examiner also considered the "struck-work" provision of the "P-6A" contract form. He concluded that the position of the Respondents on this provision, as reflected by the record, did not constitute additional evidence of the alleged violation of Section 8 (b) (3) of the Act. For various reasons he did not consider whether or not the bargaining position of the Respondents with respect to the inclusion in the preferred contract of the other "miscellaneous" clauses of "P-6A" constituted additional support for a finding of 8 (b) (3) violations.

Proponents of the complaint have excepted to the Trial Examiner's legal and factual findings with respect to the struck work clause and to his failure to pass upon the Re-

[5] See the cases cited by the Trial Examiner at page 8, ftn. 8 of the Intermediate Report.

spondents' bargaining position with respect to matters embodied in other "miscellaneous" clauses of "P-6A." It is our conclusion that, irrespective of the meaning or legal effect of the "miscellaneous" clauses in the Respondents' contract proposals, the record plainly establishes, as previously found, the Respondents' lack of "good faith" generally in proffering Form "P-6A." It therefore is unnecessary for us at this time to pass upon the substantive terms of the "miscellaneous" clauses of "P-6A" or to resolve highly conflicting and delicate contentions of the parties as to their legality.[6] This is particularly true here, where the resolution of the questions we are asked to pass upon could neither add to, nor detract from, the scope of our remedial order which we will issue herein. As was recently pointed out by Judge Learned Hand, "it is never desirable for a court to go beyond what a decision demands" in disposing of a particular case. Douds v. Local No. 1250 et al, 173 F. 2d 772 (C. A. 2). Here we are performing the same sort of judicial function that is performed by a court, and shall follow the same sound principle.

Remaining for consideration, insofar as the 8 (b) (3) aspects of the case are concerned, are the issues posed by: (1) the Respondents' exceptions to the scope of unit found; and (2) Respondent ITU's exceptions to the Trial Examiner's finding that it, as well as the Local Respondent, is jointly responsible with the Local Respondent for the violations of Section 8 (b) (3).

We are satisfied from our independent examination of the record relating to the unit issues that, as found by the Trial Examiner, the unit appropriate for the purposes of collective bargaining is one extending, in scope, to the employees[7] of all Employers who were at the times here material, members of the Chicago Newspaper Publishers' Association.[8]

We turn next to the Trial Examiner's conclusion that liability for the unlawful conduct of the negotiations, in which

[6] For the reasons set forth in his separate opinion attached hereto, Member Reynolds does not join in the majority decision not to pass upon the legality of these clauses.

[7] In the categories set forth in the Intermediate Report.

[8] See, in addition to the cases cited by the Trial Examiner at ftns. 3 and 4 of the Report as supporting the unit contentions of the proponents of the complaint, our recent decision in Matter of Associated Shoe Industries, Inc., 81 N. L. R. B., No. 38.

both Local and International officials participated, must be assessed under Section 8 (b) (3) of the Act, against both the International and the Local Respondent organizations. Respondents' exceptions to this conclusion go wholly to the attribution of responsibility to the International. It is the Respondents' position here that only the Local was empowered by the employees to act in the capacity of a bargaining agent. We believe, however, for reasons more fully set forth in the Intermediate Report, that this record established the employees' designation of both Respondent organizations for the purposes of collective bargaining.[9]

There is no serious question but that, as traditionally practiced in portions of the industry organized by the ITU or its affiliates, collective bargaining has not been (and was not here) conducted by the Local without the aid, and often, the physical participation of International officials. Although the Respondents claim that such participation reflected, in the words of our dissenting colleagues, the performance of "the ordinary functions of any parent group in advising its Locals," we are convinced that in this instance it reflected both the exercise by the International of a specific grant of bargaining authority and affirmation by the Local and its members of the existence of such authority. In our opinion, analysis of the terms of the intra-union membership arrangement relating to the scope of the International's authority, as specifically expanded, in some respects, by the membership's adoption of the "1947 Collective Bargaining Policy," fails to establish the essential indicia of complete Local autonomy—freedom in the Local to disregard the "advice" of the International and to conclude negotiations independently.[10] Thus, the intra-union rules governing the relation-

[9] **Members Houston and Murdock,** who have signed this opinion because of their agreement with the disposition of all other issues in this case, disagree with the finding that the International was also a statutory bargaining representative and refused to bargain in violation of Section 8 (b) (3). They have filed a separate dissent on this point.

[10] We see no merit to the Respondents' suggestion that we refuse, on policy grounds, to examine the conditions of the union-membership arrangement in a situation of this type. Contrary to the implication of the dissent on this specific point, the Board has historically recognized, with the approval of the Courts, that resort to study of the intra-union membership conditions as a means of determining the representative status of a union does not constitute the kind of "intrusion upon the internal affairs of unions" conflicting with the legislative scheme. See

ship between the members, the Local and the International provide, as the Trial Examiner found, not only that the Local be "guided" by all decisions of the International in its relations with employers, but that it be "controlled" by such decisions. The scope of the International's decision-making power, as described in its constitution, extends to the conditions under which members may accept employment and the general "relation of subordinate unions and individual members to their employers."[11] The specific requirements of such decisions as already have become effective, set forth in the "General Laws," cover almost every aspect of the employment relation. They impose stringent limitations on the power of the Local either to shape the terms of the collective contract,[12] or to decide whether any terms and

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[10] (Continued)
e.g., **N. L. R. B. v. Bradford Dyeing Assn.**, 301 U. S. 318 338-40; **N. L. R. B. v. McKesson & Robbins**, 121 F. 2d 84, 95, (C. A. D. C.); **N. L. R. B. v. Art Metals Construction Co.**, 110 F. 2d, 148, 149 (C. A. 2).

Compare the principles by which the majority of the Board, as presently constituted, resolved in favor of an International Union its right to seek certified representative status, even though, under the International rules it appeared that bargaining would eventually be conducted through the Local-union medium. **Matter of Lane-Wells and Co.**, 79 N. L. R. B. 252. Members Houston and Murdock dissenting here, joined Chairman Herzog in the majority decision in the **Lane-Wells** case. See also **Matter of United States Gypsum Co.** 77 N. L. R. B. 1098; **Matter of Bethlehem Steel Co.**, 79 N. L. R. B. 1271, where the internal relation of the International-Local unions was similarly considered by this Board in representation cases.

Nor do we agree with the implication of the dissent that a holding that a Local union is a party-in-interest in a representation case is in effect a holding that an International has no interest in the proceeding, or could not, if it so desired, seek representative status individually or with its local.

[11] It is admitted by the Respondent that all of the employees who were entitled to representation at the times here material were members of both the Local and the International. It is therefore clear that, as the Trial Examiner found, they were, by such affiliation, at all such times subject to the provisions of the legislated rules of both organizations. The pertinent portions of such rules, summarized above, are set forth in some detail by the Trial Examiner as part of the Intermediate Report in the ANPA case, Case No. 9-CB-5, at Section 2 of the Report.

[12] Even such matters as wage rates and modes of paying the same, matters of normal concern only to the members comprising a particular Local, are not left to the unrestricted operation of Local-Employer negotiations; for the ITU "Laws" provide minimum bases which cannot be bargained away without impairing the existence of the membership contract.

In an argument addressed to us by the Respondent International to justify, for other purposes of this case, these stringent limitations of bargaining in ITU "Laws," the International implicitly conceded that its participation is more than "advisory." This argument was that, because of the mobile nature of the craft represented by the ITU, it was imperative that certain minimum uniform conditions obtain throughout the country and that the requirements of the "Laws" were in recognition of that economic need.

conditions of employment should be stabilized through the traditional channels of collective bargaining.[13] Although, under the "Laws," the Local is the immediate party with whom employers contract and deal in the first instance, and the physical presence of International officials is not compulsory until an impasse in bargaining is reached,[14] there is no stage of negotiations in which the International does not actively participate, even though its officials may not physically be present. As is undisputed, tentative contract proposals formulated in the first instance by the Local, must be (and here were) cleared by the International before submission to the Employers; and negotiated contracts, awaiting only the usual formalities of ratification by the membership, must be approved by the International before the contract is submitted to the procedures attendant to formalization.[15]

We find, therefore, as did the Trial Examiner, that both the International and the Local were, at all times here material, under the statutory duty to bargain collectively imposed upon employee representatives by Section 8 (b) (3) of the amended Act. In so finding, we need not definitively decide whether, under the intra-union membership scheme, both organizations are so functionally integrated that designation of the Local alone must auto-

[13] The "1947 ITU Collective Bargaining Policy" incorporated in the "General Laws" effective on and after August 22, 1947, the effective date of the amendments to the Act, withdrew authority from the Local unions to guarantee to employers that negotiated employment terms would be formalized by a bilateral contract.

[14] There is nothing in either the ITU "Laws" or the Local rules which precludes the physical participation of ITU officials at any stage of negotiations. But their physical participation is mandatory whenever disagreement between employer-union representatives at the conferences reaches the critical stage which renders further conferences between the immediate negotiators apparently impossible.

[15] Inter alia, the failure of a Local Union to obtain ITU approval of a proposed contract or consummated agreement has the immediate result of depriving the Local members of a right, otherwise existing under the intra-union legislative scheme, to draw upon the International strike defense funds as a means of supporting strike action undertaken to enforce either the unapproved bargaining demand or the terms of the unapproved agreement. Such failure may, at the discretion of the International, also result in loss of all membership rights.

Although the International has argued to us that the International has, in certain instances, failed to penalize Local unions which did not observe the "Laws" strictly, we do not consider that argument, or the facts alleged therein, as having any materiality here. There is no claim that the Respondent Local did not follow the "Laws" strictly. Moreover, it is not our function to decide the wisdom of internal rules, or to police their observance. All we need decide and do decide here is what powers the membership contract vests in the organization.

matically be deemed to constitute also designation of the International, or whether both organizations possess certain independent powers, so that separate designation of each organization as a representative within each of the respective areas of authority resulted. Suffice it to say that, on this record, either of the above inferences is permitted to us, and that either is legally operative to impose upon the International, as well as the Local, liability for the unfair practices in question.

We conclude, as did the Trial Examiner, that the Respondents and each of them, have at all times since August 22, 1947, failed and refused to bargain collectively in good faith with the Association and its member companies. We shall therefore order the Respondents to bargain collectively upon request by the complainants, so long as they are the representatives of the employees subject to the provisions of Section 9 (a) of the Act.[16]

Finally, we must determine the validity of the Trial Examiner's dismissal of the 8 (b) (1) (A) allegations of the complaint. None of the conduct specifically relied upon here by the proponents of the complaint in support of the 8 (b) (1) (A) allegations differs in character from that relied upon by the proponents of the complaint in the ANPA case, decided this day.[17] As we said in that case, such conduct cannot properly be reached by invocation of Section 8 (b) (1) (A) of the Act. We therefore adopt the Trial Examiner's recommendation that the 8 (b) (1) (A) allegations of the complaint be dismissed in their entirety; and will so order.

ORDER

Upon the entire record in the case, pursuant to Section 10 (c) of the National Labor Relations Act as amended, the National Labor Relations Board hereby orders that:

1. Respondents International Typographical Union, and Chicago Typographical Union, No. 16, and their officers, agents and representatives, shall:

(a) Cease and desist from:

(1) Threatening to take strike action, or directing, instigating, or encouraging employees to engage in or to

[16] Non-compliance with Section 9 (f), (g), and (h) is not available to bar an order to bargain. **Matter of National Maritime Union**, supra, at page 988.

[17] 86 N. L. R. B., No. 115.

threaten to engage in, strike action, or approving or ratifying strike action, taken by employees, for the purpose of requiring employers, either non-contractually or as a matter of contractual obligation, to violate Section 8 (a) (3) by discriminating with respect to the employment or conditions of employment of any employee;

(2) In any other manner causing or attempting to cause employers to discriminate against employees in violation of Section 8 (a) (3) of the Act;

(3) Refusing by specific refusal, or insistence upon a 60-day cancellable contract, or any other means, to bargain collectively as the exclusive representatives of the employees in the unit herein found to be appropriate, so long as they are the representatives of the employees of the unit herein found to be appropriate.

(b) Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(1) Upon request, bargain collectively as the exclusive representatives of the employees in the unit herein found to be appropriate with the Employers or their representatives and if an understanding is reached embody such understanding in a signed agreement having a reasonable duration;

(2) Post immediately at conspicuous places at the business office of the Respondent Local, and at all other places where notices or communications to members of Respondent Local are customarily posted, and publish in the Typographical Journal, official paper of the Respondent International Typographical Union, a copy of the notice attached hereto and marked Appendix A. This notice shall be signed by a duly authorized officer of the International Typographical Union and by a duly authorized officer of the Chicago Typographical Union No. 16, and shall remain so posted and maintained for a period of 60 days;

(3) Notify the Regional Director for the Ninth Region in writing, within ten (10) days from the date of this Order, what steps the Respondent have taken to comply herewith.

It Is Further Ordered that the complaint be, and it hereby is, dismissed insofar as it alleges that the Respondents coerced and restrained employees in violation of Section 8 (b) (1) (A) of the Act.

Signed at Washington, D. C., this 28th day of October 1949.

Paul M. Herzog
Chairman

John M. Houston
Member

James J. Reynolds, Jr.
Member

Abe Murdock
Member

J. Copeland Gray
Member

(Seal) National Labor Relations Board

JAMES J. REYNOLDS, JR., MEMBER, concurring specially:

Although I concur in the findings that, as charged in the complaints here and in the ANPA case, the respective Respondents violated Section 8 (b) (2) and 8 (b) (3) of the Act, I cannot accept the refusal of my colleagues in either of the two cases, to exercise the full decisional powers the litigation of these cases appropriately invoked. I object, more specifically, to the deliberate passing of the serious questions (raised by allegations of the complaints in both cases) concerning the validity and scope in operation of the "miscellaneous" clauses appearing originally in Form "P-6A."

In broad terms, the evidence adduced in both cases established the existence of a dispute between management and labor as to the impact of a new statutory scheme on the prior, and largely collectively agreed upon, methods of conducting labor relations in the newspaper industry. The dispute was comprehensive in the sense that it involved not one, but substantially each and all of the established methods and rules by which labor relations were being conducted at the time the new statutory scheme became effective. More specifically, the bargaining position of the parties on the "P-6A" clauses represented an attempt by the Respondents to insure by a variety of contractual provisions the pre-statute methods of conducting labor relations, and a resistance by management to the acceptance of the obligation contractually, or otherwise, to continue such methods. Duration was but one phase of the dispute; for, as the record shows, in addition to the disagreement by the parties as to legal sufficiency of a 60-day cancellation clause, the parties were hopelessly deadlocked not only on questions as to the legal propriety of carrying over into the post-Act period the obligation to maintain employment regulations and terms theretofore accepted, but also as to whether the substance of the miscellaneous "P-6A" clauses would, in operation, necessarily achieve that result in fact. There is no question but that in such a situation this Board constitutes a proper, if not the only, forum for the presentation of such issues.[18] It is equally clear that none of the

[18] In the past we have considered many cases where, as here, a refusal-to-bargain complaint was utilized as a means of resolving a deadlock in negotiations resulting in whole or in part from a dispute as to the

elements necessary to permit our resolution of these issues is lacking here. The record shows that all parties desire the Board to render a definite decision disposing of all matters included in the complaints upon which issue has been joined, and that the questions concerning the legality of the clauses were thoroughly litigated, exhaustively briefed, and also argued orally before the Board. What the majority approach accomplishes, so far as the parties are concerned therefore, is to deprive them of their present right to our judgment on important subjects litigated here at tremendous cost to both. But more, this approach does a disservice to the public at least to the extent that it leaves problems unsettled which are demonstrably pregnant with the possibilities of industrial strife.

There may be cases in which evasion of issues of the type here presented might possibly be justified. But this is not one of them. Here we do not have a situation where we can reasonably anticipate that good faith efforts by the parties to comply with our decision, and to bargain for a contract of a reasonable duration, would necessarily include an abandonment by the union of these clauses or an acceptance of them by the Employers. The course of litigation of the ITU cases both here and in the Federal court

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[18] (Continued)
legality of the undertakings one side wishes to secure from the other, or because of differences as to whether the subject matter sought to be bargained about is proper subject matter for bargaining under the Act. See e.g., **Matter of National Maritime Union**, 78 N. L. R. B. 971; enforced ..... F. 2d ....., 24 LRRM, 2268 (C. A. 2); **Matter of American Radio Association**, 82 N. L. R. B., No., 151; **Matter of Inland Steel Co.**, 77 N. L. R. B., No. 1, enforced 170 F. 2d 247, (C. A. 7); **Matter of W. W. Cross Co., Inc.**, 78 N. L. R. B. 149 enforced ..... F. 2d ....., 24 LRRM 2068 (C. A. 1). Such cases have also demonstrated that it is not unusual for a dispute between negotiating parties to extend, as the dispute here does, beyond one aspect of a proferred or desired contract and for a complaint to embrace all phases of the dispute. We have not refused in such cases to determine all of the legal questions giving rise to the complaint, although a finding of illegality on one would have been sufficient for the purpose of issuing an order. Thus, for example, in the **National Maritime Union** case cited above, we did not stop with a determination of the meaning and legal effect of the "hiring-hall" clause, but also determined the meaning and legal effect of the "laying up and fitting-out" clause. Indeed, as a means of serving the public interest in resolving doubt as to what is proper collective bargaining in the statutory sense, we have, on occasion, gone out of our way to analyze and resolve contentions of the parties not essential to the ultimate conclusion or theory we adopted. See for example, **Matter of Times Publishing Co.**, 72 N. L. R. B. 672, where we specifically indicated agreement with the Employer's contention that a union's bad faith may preclude our test of employer "good faith," although disposition of that issue was unnecessary to a determination of the case.

has left us no room for speculation that, absent specific rulings on the clauses, neither of these contingencies will occur. Thus, our decision in this case does no more than to restore the uncertain situation to what it was after the Federal court issued its injunction decree. That decree like the order we are issuing here, merely required bargaining in good faith for a contract of fixed duration and gave no clue as to which of the substantive undertakings sought to be secured from Employer under the "P-6A" miscellaneous clauses, could or could not be legally covered by a collective contract under this Act. As we are all aware, the absence of specificity in the Court's decision and decree permitted the continuation of the same controversy which had theretofore constituted a stumbling block to the consummation of a contract and to the achievement of industrial peace. For, subsequent to the decree, and until contempt proceedings were initiated, the unions still insisted that contracts, irrespective of their duration, contain what they considered to be the protective features of the "P-6A" miscellaneous clauses; and the Employers, because of continuing doubts as to legality, resisted entering into any agreements containing such features.[19]

Our present failure to dissipate this source of controversy, does not, of course, bar the parties from litigating the issues in future proceedings. But this does not excuse our disregarding the issues now that they are here before us. To deprive the parties, pending the initiation and conclusion of such future proceedings, of their present right to our judgment, is to subject both them and the public to unnecessary injury which can never be retroactively repaired. Absent some definite guidance by a duly constituted public agency, both the Employers and the unions are faced with unhappy alternatives. Thus, the Employers must either bear the burden of industrial warfare, or capitulate to demands they believe to be unlawful. Similarly, the unions must either sacrifice their interest in obtaining the best bargain they believe to be legally permissible by

[19] I am aware that in the subsequent contempt proceedings the decree was in effect made more specific with respect to the legality of some of the clauses now before us. **Evans v. International Typographical Union, et al,** 81 F. Supp. 675 (D.C. Ind.). But, pursuant to the legislative design that our decision and order would finally settle all questions in connection with an unfair labor practice charge, the Courts' decree will automatically dissolve upon issuance of our decision herein.

capitulating to the Employers' viewpoint, or else bear the heavy toll of financing strike action until the validity of their position be judicially declared. So far as the public interest is concerned, the undesirable social implications of any of the above alternative private-party courses of action cannot but have harmful effect.

That the majority has chosen to render nugatory the efforts of the parties to obtain our aid in their dilemma is serious enough. But it is a far more serious consideration that it has abdicated its responsibility to the public in the course of administering an Act which commands that Board procedures shall be available "to prescribe the legitimate rights of both employers and employees in their relations affecting commerce," to prevent "interference by either with the legitimate rights of the other, to protect the rights of employees in their relations with labor organizations whose activities affect commerce and to protect the rights of the public in connection with labor disputes affecting commerce."[20]

Signed at Washington, D. C. this 28th day of October 1949.

James J. Reynolds, Jr.
Member

NATIONAL LABOR RELATIONS BOARD

[20] The quotations are from Section 1 of the Act.

JOHN M. HOUSTON and ABE MURDOCK, Members, dissenting in part:

We cannot join in the decision of the majority insofar as it concludes that the International, in addition to the Chicago Local, refused to bargain collectively with the Association and its member companies, in violation of Section 8 (b) (3) of the Act.[21] In our opinion, the record, appraised as it must be in the light of the traditional relationship between this Local and its International, and between locals and internationals in the labor movement generally, demonstrates that only the Chicago Local constituted the statutory representative of the employees concerned, and therefore, that it alone was liable under the Act for the unlawful refusal to bargain.

Our difference with the majority stems from our inability to adopt, as do they, the rationale advanced by the Trial Examiner, namely, that the functional organization of the International and its Locals, particularly as expanded after the August 1947 convention, served to integrate each Local with the International as a single bargaining entity, or, in any event, to render the International and each Local co-representatives for collective bargaining purposes.

It is clear that, before the 1947 convention, the International and its Locals operated as separate autonomous organizations, and that the Chicago Local alone functioned as the statutory representative of the employees of the Association's member companies. This was consistent both with the Board's unmistakable recognition that locals, as generally constituted, were entities separate and apart from internationals,[22] and more particularly with the Board's acknowledgment of the autonomy of the Locals of this International by certifying its Locals, including the

[21] Under Section 8 (b) (3), it is an unfair labor practice for a labor organization, or its agents, "to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of Section 9 (a)." Section 9 (a) provides, in pertinent part, that "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining * *"

[22] Contrary to the statement in the majority opinion, our holding on the facts in this case does not necessarily or by intention imply that an international union could not, if it desired, seek representative status either individually or jointly with its local.

Chicago Local, as the exclusive bargaining representatives of employees of employers in the printing industry.[23]

It is equally clear that the events of the convention left this relationship undisturbed. For in adopting a broad "Collective Bargaining Policy" and providing for its implementation through the required approval of all contracts by the International's president and the possible expulsion by the executive council of any dissident Local, the Locals were neither abdicating their traditional autonomy, nor were their members thereby selecting or designating the International as a joint bargaining representative.

The Local's apparent willingness to vest the International with additional authority to protect their mutually desired program must be measured against their equal dilligence in preserving their long established independence. Thus, for example, they continued to retain both their right to initiate and conduct negotiations, and their power to bargain almost unrestrictedly as to wages and other related economic matters. Moreover, they reserved to themselves alone the ultimate power to approve or disapprove any collective bargaining agreement, to sign contracts, and to enter upon strike action. The retention of such pivotal rights in the locals is hardly consistent with a determination that these organizations became "integrated" with the International as a bargaining entity.

It is likewise difficult to perceive how the delegation of additional "veto" powers to the International at the 1947 convention, with possible attendant penalties for failure by a local to adhere thereto, can be construed as an affirmative designation or selection of the International as a joint bargaining representative. Certainly there is no evidence that the members or their representatives in the Locals, by thus strengthening the ability of the International to perform

[23] See, e.g., **Matter of LaSalle-Crittenden Press, Inc.**, Case No. 13-R-3784 (certification issued April 1947), and **Matter of Excello Press, Inc.**, Case No. 13-R-3934 (certification issued November 1946), in which the Board certified the Chicago Local as the exclusive bargaining representative of the employees there concerned. See also **Matter of Register Publishing Co., Ltd.**, 44 N. L. R. B. 834, enfd. as mod., 141 F. 2d 156 (C. A. 9) where the Board ordered the Employer to bargain with the Santa Ana, California, local as the exclusive representative of employees of the Employer.

Clearly, membership in the International is not the touchstone of the employees' designation, See **N. L. R. B. v. Electric Vacuum**, 315 U. S. 685, 691. See also, **Pueblo Gas & Fuel Co. v. N. L. R. B.**, 118 F. 2d 304, 308 (C. A. 10).

its traditional function of coordinating the policies of the entire organization, specifically intended to displace the locals as the exclusive bargaining representatives. And in view of the powers reserved to the Locals, including, as already mentioned, the right to conduct negotiations and to determine final action on contracts and strikes, any inference of such intention is completely without justification.[24]

We note that the majority also adverts to the appearance of officials of the International at collective bargaining negotiations as indicative of the integrated or joint nature of the bargaining relationship. The record shows, however, that this activity by the International's officials, which occurred even before the August 1947 convention, resulted only when an impasse was reached in negotiations between an employer and the Local, and then only upon the specific request of the Local concerned. The record further reveals that this activity had, as its main purposes, aiding the Local in reaching an advantageous settlement and, at the same time, protecting the funds of the International from depletion by unnecessary strikes.[25] In our view, the International's officials, by such appearance at bargaining conferences, and by the fulfillment of their other duties in connection with the bargaining activities of the Locals, were merely performing a part of the ordinary functions of any parent group in advising its Locals, furnishing them with

[24] The logical extension of the majority's position would require the Board, in all cases in which it designates the statutory representatives, to analyze in detail the internal structure and operations of all the participating unions. Not only will this create a serious evidentiary burden, which we do not believe was contemplated under the Act, but such result is also directly contrary to our recognition that we should not "intrude too deeply into the (internal) affairs of labor organizations." Matter of Lane Wells Company, 79 N.L.R.B. 252. The principal cases relied upon by the majority on the issue of intrusion, namely N.L.R.B. v. Bradford Dyeing Assn., N.L.R.B. v. McKesson & Robbins, and N.L.R.B. v. Art Metals Construction Co., footnote 7, supra, are clearly inapposite. In those decisions, the courts countenanced a mere surface examination mainly of such records as membership cards, lists or ledgers to ascertain the majority status of the unions concerned.

[25] When the International's officials were called into negotiations by the locals, the employers were apprised that such appearance was by reason of the following provision in the union's by-laws:

> In the event of a disagreement between a subordinate union and an employer, which, in the opinion of the local union, may result in a strike, such union shall notify the President, who shall in person or by proxy investigate the cause of the disagreement and endeavor to adjust the difficulty.

assistance, and conserving the strength and coordinating the program of all the Locals. These actions served to enhance, rather than to alter, the traditional relationship between the Locals and the International.

We would therefore direct our bargaining order against the Chicago Local alone. By thus excluding the International, we clearly would not be impairing in any respect the effectiveness of our order. In the first place, there is no evidence whatsoever that the International would attempt to encourage its Local to disregard a lawful Board direction. Moreover, the law is well settled that such action by the International, in the face of a court mandate enforcing our order, would be proscribed, regardless of the fact that the International was not specifically mentioned in the order.[26]

Accordingly, we perceive no warrant in policy or law for finding that the International has also violated Section 8 (b) (3) of the Act. We would, therefore, dismiss the allegations in the complaint to the extent that they charge the International with an unlawful refusal to bargain.

Signed at Washington, D. C. this 28th day of October 1949.

John M. Houston
Member

Abe Murdock
Member

NATIONAL LABOR RELATIONS BOARD

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[26] See N.L.R.B. v. National Broadcasting Co., Inc., 150 F. 2d 895 (C.A. 2), enfg. 61 N.L.R.B. 161; and Neptune Meter Company v. N.L.R.B., 158 F. 2d 418 (C.A. 2), enfg. as mod. 58 N.L.R.B. 1240 and 66 N.L.R.B. 292, cert. den. 333 U. S. 826. See also decisions collated in 17 C.J.S., par. 12, p. 16.

APPENDIX A

NOTICE TO ALL OFFICERS, REPRESENTATIVES, AGENTS AND MEMBERS OF THE INTERNATIONAL TYPOGRAPHICAL UNION PURSUANT TO A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

We Will Not threaten to take strike action, or direct, instigate, or encourage employees to engage in or to threaten to engage in, strike action, or ratify strike action taken by employees, for the purpose of requiring employers either non-contractually or as a matter of contractual obligation to violate Section 8 (a) (3) of the Act by discriminating with respect to the employment or conditions of employment of any employee.

We Will Not in any other manner cause or attempt to cause employers to discriminate against employees in violation of Section 8 (a) (3) of the Act.

We Will, upon request, bargain collectively in good faith in our capacity as exclusive representatives of all employees in the bargaining unit described below, with Chicago Newspaper Publishers Association, as the representative of its member-companies, with respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached, we will embody such understanding in a signed agreement having a reasonable duration.

The bargaining unit is:

All employees of the composing rooms of the member-companies of Chicago Newspaper Publishers Association (Chicago Daily News, Inc., Illinois Publishing and Printing Company, the Journal of Commerce Publishing Company, Sun and Times Co., and Tribune Company) who perform work pertaining to printing, including proof-press operators, but excluding office boys, metal men, advertising dispatch boys, clerical

and other employees, and all supervisors as defined in the National Labor Relations Act as amended.

CHICAGO TYPOGRAPHICAL UNION NO. 16

By.....
Title

By.....
Title

INTERNATIONAL TYPOGRAPHICAL UNION

Dated.....

This notice must remain posted for sixty (60) days from the dates hereof, and must not be altered, defaced, or covered by other material.

GENERAL COUNSEL'S EXHIBIT A1-E.

UNITED STATES OF AMERICA
Before the National Labor Relations Board

In the Matter of International Typographical Union, and its Agents Woodruff Randolph, Larry Taylor, Elmer Brown, and Don Hurd, and American Newspaper Publishers Association	Case No. 9-CB-5
Chicago Typographical Union No. 16 and International Typographical Union and Chicago Newspaper Publishers Association on behalf of The Chicago Daily News Inc.; Illinois Publishing and Printing Company; The Journal of Commerce Publishing Company; Sun and Times Co.; and Tribune Company	Case No. 13-CB-6

ORDER CONSOLIDATING CASES.

A charge, pursuant to Section 10 (b) of the Act, having been filed by American Newspaper Publishers Association in Case No. 9-CB-5; a charge having been duly filed by Chicago Newspaper Publishers Association on behalf of The Chicago Daily News Inc.; Illinois Publishing and Printing Company; The Journal of Commerce Publishing Company; Sun and Times Co.; and Tribune Company in Case No. 13-CB-6, and the General Counsel of the Board having duly considered the matter and deeming it necessary in order to effectuate the purposes of the National Labor Relations Act, and to avoid unnecessary costs or delay,

It Is Hereby Ordered, pursuant to Section 202.33 of National Labor Relations Board Rules and Regulations—Series 5, that these cases be, and they hereby are, consolidated for purposes of hearing only.

Dated, Washington, D. C., January 14, 1948.

On behalf of the Board:

Robert N. Denham
General Counsel